

...

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2841-2014 [O&M]

Date of Decision : February 18th, 2016

Jagdish Kaur

.... Petitioner

Versus

Dinesh Dhand

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present Mr. Vishal Aggarwal, Advocate,
for the petitioner.

Mr.Piyush Kant Jain, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 14.08.2013 [Annexure P/5] passed by Rent Controller, Ludhiana, whereby application filed by the petitioner for taking site plan [Ex.P9] showing the correct dimensions of the property in dispute in lieu of site plan [Ex.P4], was dismissed.

2. Relevant facts of the case; that the petitioner had filed an Ejectment Petition under Section 13 of the East Punjab Urban Restriction Act for ejectment of the respondent from one shop forming part of building No. B-12-158 (New) and B-II-455 (Old) Karimpura Bazar, Ludhiana which was shown red in the site plan.

...

3. Respondent filed written reply taking the plea that the area/size of the shop in possession his possession is 8'x40' whereas, the petitioner has deliberately set-up the size of the demised shop as 8'x12'.6" simply to deceive and hoodwink the Court. As such, present petition for ejectment is for partial ejectment. Thereafter an application was filed by the petitioner for considering the site plan [Ex. P9] in lieu of site plan [Ex.P4] with the submission that the demarcation of the shop was 40'x8' and correct site plan Ex. P9 is on the file. Ejectment of the respondent has been sought from the entire shop and not from part of the shop. So, the site plan Ex. P9 be considered.

4. Respondent contested the application taken the plea that earlier specific objection was taken in that regard that the shop let out by the petitioner was 8'x40' and the alleged size of the shop so set up by the petitioner to be 8'x12'.6" was categorically denied. That way, the site plan furnished by the petitioner was also denied as the same is incorrect site plan and the petitioner cannot be allowed to take such a plea and the same has rightly been discarded by the court below.

5. While dismissing the application, the Court below placed reliance on the judgment of this Court in **Sushil Kumar Kaura Vs. Dutt Pal Kapur, (1998) 2 RCR (Civil) 551 (1).**

6. Having considered the submissions made by learned counsel for the parties and the facts of the case in hand, this Court is of the considered view that the foundation of any litigation is pleadings by way of plaint and written statement. In this case, petition for ejectment under Section 13 of the Act was filed by giving complete description, i.e. "one shop forming part of building No. B-12-158 (New) and B-II-455 (Old) Karimpura Bazar,

...

Ludhiana which has been shown as red in the site plan”. However, in Ex. P4, the area of the shop was shown to be 8'x12'.6”. The respondent had taken the plea that the area/size of the demised shop in possession of the respondent is 8'x40' and for that purpose, the application was filed to take into consideration the correct description of the property as given in Ex.P9. That way, it was not a case of change of site plan with some different property or with some different details and the facts of the case in hand are quite at variance from the facts of **Sushil Kumar Kaura's case [supra]**. Such a matter was before the Full Bench of Hon`ble Allahabad High Court in **Ganesh Vs. Sri Ram Lalalji Mahraj Birajman Mandir and others,** **1973 AIR [Allahabad] 116** and the Hon`ble Full Bench observed as under:-

“10. Before parting with the case we may also refer to Order 7, Rule 3 of the Code of Civil Procedure, which provides:-

“Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and in case such property can be identified by boundaries or numbers in a record of Settlement or Survey, the plaint shall specify such boundaries or numbers.”

7. As per provisions of Order VII Rule 3 CPC, the requirement of law is that where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and in case such property can be identified by boundaries or numbers in a record of Settlement or Survey, the plaint shall specify such boundaries or numbers. In the present case, the complete description of the property has been given in the plaint itself and there was no confusion with regard to the description of the property with the parties to the litigation. As far as the

...

exact measurement of the property is concerned, earlier incorrect measurement was given on the basis of report prepared by Draftsman and during trial stage itself, the petitioner came to know of that fact and especially having been pointed out by the respondent, that exact measurement is 8'x40', the application for taking document, Ex. P9 on record was filed, but the Court below dismissed the said application without considering all these facts and the legal proposition as required under Order VII Rule 3 CPC. As such, the impugned order is legally not sustainable.

8. In view of the above, the present petition stands allowed and the impugned order dated 14.08.2013 [Annexure P/5] passed by Rent Controller, Ludhiana is set-aside and the application filed by the petitioner for taking site plan [Ex.P9] showing the correct dimensions of the property in dispute in lieu of site plan [Ex.P4] stands allowed.

(SHEKHER DHAWAN)
JUDGE

February 18th, 2016
som