

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5966 of 2016 (O&M)

Date of decision:14.09.2016

Harish Kumar

... Petitioner

Vs.

Surinder Kumar Mukhija

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sandeep Panwar, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The petitioner-plaintiff in a suit for ejectment, i.e., civil suit No.370 of 2011 (Annexure P-1) is aggrieved of the impugned order dated 22.08.2016 (Annexure P-10), whereby, application for consolidation of the aforesaid suit along with other suit for declaration filed at the instance of the respondent and defendant in first suit challenging the sale deed, has been dismissed.

Mr. Sandeep Panwar, learned counsel appearing on behalf of the petitioner submits that petitioner had filed a suit for ejectment against the respondent-defendant on the basis of the title, i.e., sale deed dated 26.06.2007 and the same has been challenged in the second suit. The District Judge, vide order dated 26.04.2006, transferred the suit. The other party had given 'No Objection' to the consolidation proceedings as the matter in dispute in both suits are same and it would be in the fitness of

things to consolidate. He further submits that both the suits are at evidence stage

I have heard learned counsel for the petitioner and appraised the paper book.

The claim in both the suits, i.e., Annexure P-1 and P-2, reads thus:-

Annexure P-1

“Suit for possession by way of ejectment of the defendant from the Northern Portion of House bearing House Tax No.7716, Ward No.4, New AMC No.1613, Block No.4, bounded as:-

North - House of Sh. Shadi Lal; length 41' 3”

South - Remaining portion of H.No.1613/7716, Ward No.4; Nadi Mohalla Ambala City Length 41'-3”.

East - Street length 9'-6”;

West- House of Bhatia Paints length 9'-6”;

consisting of two rooms, kitchen, staircase and Sahan on the ground floor marked by letters ABEF and open terrace and toilet marked by letters KLMN on the first floor as shown in the colour red in the site plan annexed, situated at Nadi Mohalla, Ambala City with a further direction to the defendant to hand over the vacant physical possession of the aforementioned premises to the plaintiff and for a recovery of Rs.3,000/- as mesne profits for the illegal use and occupation of the premises in dispute for the months of November and

December, 2011 under Order 7 Rule 1 CPC.”

Annexure P-2

“Suit for declaration to the effect that the sale deed no.1605 dated 26.06.2007 allegedly executed by Sat Pal Mukhija son of Shri Daulat Ram son of Shri Karam Chand, resident of House NO.7716/1613, Ward No.4, Nadi Mohalla, Ambala City in favour of Harish Kumar son of Shri Sat Pal son of Shri Daulat Ram, resident of House No.1613/7716, Ward No.4, Nadi Mohalla, Ambala City of House No.7716/1613, Ward no.4, Nadi Mohalla, Ambala City is a sham transaction, result of fraud, without consideration, void, null, inoperative and is not binding upon the right, title or interest of the plaintiff as the house was partitioned between the plaintiff and the respondent in equal share during the life time of Sat Pal Mukhija and Sat Pal Mukhija (father of the plaintiff and defendant) himself got erected the partition wall which is still in existence and the right of half share was given up by the father in favour of the plaintiff and the plaintiff was/is enjoying the suit property without any interference from any corner and still today the plaintiff is in physical possession of the half share of above said house and for permanent injunction restraining the defendant through himself, his friends, relatives or through any other person from taking forcible possession, alienating, transferring, creating any type of charge on the property in

dispute, i.e., portion of house no.1613/7716, Ward no.4, Naddi Mohalla, Ambala City, as shown in the site plan or any other relief, which this learned court deems fit. Plaint under Order 7 Rule 1 CPC.”

The ejectment had been sought on the basis of the sale deed dated 26.06.2007 which has been challenged in the second suit. In my view, the consolidation of the suit is necessary as the parties are same. The sale deed in respect of the property is also the same. In order to avoid prolongation of the litigation, much less, perpetual appearance of the witnesses, in my view, evidence can be led in the previously instituted suit. Both the parties are related to each other particularly which is reflected in the impugned order as the other party had given no objection.

The revision petition stands allowed and both the suits are ordered to be clubbed together. Evidence shall be led in the first suit.

(AMIT RAWAL)
JUDGE

September 14, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No