

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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RSA 3638 of 2009 (O&M)
Date of decision: 18.01.2016

Niranjan Singh

..... Appellant

Versus

Dhiraj Mattoo

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Kanwal Goyal, Advocate with
Mr. Amarjit Markan, Advocate
for the appellant

Mr. Aseem Kalia, Advocate for
Mr. Premjit Kalia, Advocate
for the respondent

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

Rekha Mittal, J.

The present appeal has been directed against the judgment and decree dated 01.05.2009 passed by the Additional District Judge, Amritsar, accepting the appeal against the judgment and decree dated 03.08.2007 passed by the Civil Judge (Junior Division), Amritsar and as a result, suit of the respondent/plaintiff for permanent injunction has been decreed.

The appellant is a tenant in one shop along with a store under the respondent @ Rs.125 per month for running a Tea stall in the said shop. A rent note dated 10.04.1989 was executed by the appellant. The respondent

(landlord) filed suit for permanent injunction, restraining the appellant/defendant/tenant from making any addition, alternation and repair in the shop as the building has become unfit and unsafe for human habitation. He had filed a rent petition against the appellant which was decided in his favour and the appellant is threatening to make additions, alterations or repairs to defeat his right for eviction. It is further pleaded that the appellant has collected building material at the spot and by employing labour, he tried to forcibly effect repairs and alterations.

The appellant/defendant filed the written statement, raising legal objections in regard to maintainability of suit, cause of action as he has no intention to make additions, alterations and reconstruction in the shop and he never attempted or took steps to make any additions or alterations. However, relationship of landlord and tenant between the parties is admitted with a plea that in rent note dated 10.04.1989, he has a right to effect necessary repairs in the premises in case necessity arises.

The controversy between the parties led to framing of following issues by the learned trial Court:-

- (1)Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- (2)Whether the suit is not maintainable? OPD*
- (3)Whether the plaintiff has not come to the Court with clean hands ?OPD*
- (4)Whether the plaintiff has no cause of action to file the instant suit?OPD*
- (5)Relief.*

The learned trial Court permitted the parties to adduce evidence in support of their respective contentions. The respondent/plaintiff examined

Gurcharan Singh (PW1), Mukhtiar Singh (PW2), Subash Chander (PW3), appeared as his own witness PW4, Rakesh Sharma (PW5).

To rebut evidence of the respondent/plaintiff, the appellant/defendant examined Daulat Ram (DW1), Harjit Singh (DW2), Satwinder Singh (DW3), Sucha Singh (DW4) and the appellant also stepped into the witness box as DW5.

The learned trial Court bestowed its thoughtful consideration to the pleadings, issues and evidence adduced by the parties in the light of submissions made by their respective counsel and decided issues No. 1 to 3, taken up together, in favour of the appellant and against the respondent, while issue No. 4 was also answered in favour of the appellant and as a consequence, the suit filed by the respondent (landlord) was dismissed leaving the parties to bear their own costs.

The judgment and decree passed by the learned trial Court became subject matter of challenge before the appellate Court. The appeal preferred by respondent-Dhiraj Matto was allowed by the Additional District Judge, set aside the judgment and decree passed by the trial Court and suit of the respondent has been decreed, restraining the appellant from making any additions, alterations/repairs of any nature whatsoever in any manner in the shop in question with costs.

Feeling dissatisfied with the judgment passed by the first appellate Court, the present appeal has been preferred by Niranjana Singh.

Learned counsel for the appellant has submitted that as the appellant never had any intention nor made any attempt to cause any additions, alterations and reconstruction in the shop in question, the judgment

and decree passed by the appellate Court restraining him from making any additions, alterations/repairs or reconstruction of any nature whatsoever in any manner in the shop in question, in fact, would not cause prejudice to him but he has a serious grievance to express in respect of findings of the appellate Court that he has actually made additions or alterations in the shop in dispute during pendency of suit and thus, he is guilty of overt act by raising boundary wall, changing the roof and making of floor thus entitle the respondent to get a decree of injunction. It is further argued that on an earlier occasion, the respondent initiated eviction proceedings under the rent act on the ground of the appellant being in arrears of rent, guilty of making additions and alterations and subletting a part of the disputed premises and the shop having become unfit and unsafe for human habitation and eviction application was allowed by the Rent Controller but the findings recorded by the Rent Controller were reversed in appeal by the appellate Court at Amritsar and the revision petition preferred by the respondent was dismissed *in limine*, by this Court.

It is further argued that the respondent has again filed a petition for eviction of the appellant on the ground of additions/alterations on the basis of findings recorded by the learned appellate Court. It is urged that the findings recorded by the learned appellate Court that the appellant is guilty of overt act by making aforesaid additions/alterations are the result of non-application of mind, non-appreciation of the pleadings, misconstruing and misreading of evidence on record. In order to substantiate his contentions, he has made submissions on few counts. The first submission made by learned counsel is that there is no reference to any additions or alterations in the

disputed shop, in the plaint filed by the respondent wherein his only plea is that the appellant is threatening to make additions/alterations with a view to frustrate his remedy to seek his eviction on the ground of building being unfit and unsafe for human habitation. The respondent appeared in the witness box and his affidavit tendered in examination-in-chief is conspicuously silent about any addition/alternation having been made by the appellant in the shop in question. The appellate Court has failed to notice various contradictions in the statements of Gurcharan Singh (PW1), Mukhtiar Singh (PW2), Subash Chander (PW3) as well as contradictions in the stand of these witnesses vis-a-vis the facts put to the witnesses of the appellant. It has been argued that the appellate Court has wrongly held in para 11 of the judgment that there is no cross examination of Gurcharan Singh (PW1) in regard to the factum of raising boundary wall, construction of roof and floor. For this purpose, counsel has carried me through cross examination of Gurcharan Singh (PW1), wherein he has admitted that boundary wall was constructed 10-11 years ago. The Barsati was constructed about 20 years ago and flooring of the shop was laid about 15-20 years ago. He has further pointed out that Gurcharan Singh was cross examined on 10.01.2003 in the suit instituted by the respondent on 02.02.2002.

Another submission made by counsel is that learned appellate Court has wrongly held that the appellant (DW5) has admitted that back side boundary wall is constructed after demolishing earlier one. Similarly, flooring is admitted by Satwinder Singh (DW3).

Counsel for the respondent, on the other hand, has supported the judgment passed by the first appellate Court with the submissions that in view

of evidence adduced by Gurcharan Singh (PW1), Mukhtiar Singh (PW2), Subash Chander (PW3) and admission of the appellant during cross examination, no fault can be found in the findings of the learned appellate Court that the appellant is guilty of making additions and alterations in the shop in question, giving a cause to the respondent to express his grievance and seek permanent injunction, restraining him from making additions and alterations in the property in question.

I have heard counsel for the parties and perused the records.

The substantial question of law which arises for consideration is *'whether the findings of the appellate Court that the appellant during pendency of the suit has raised boundary wall, changed the roof and made flooring and thus, guilty of overt act are perverse being the result of misreading and misconstruction of evidence?'*

Before advertng to the rival submissions made by counsel for the parties, it is pertinent to mention that basis of the suit by the landlord against his tenant is that the demised shop has become unfit and unsafe for human habitation, therefore, the respondent/plaintiff has filed a rent petition against the appellant which was decided in his favour by the Rent Controller, Amritsar and ejectment order has been passed against the appellant/defendant, the defendant/ appellant in order to defeat a valuable right accrued to the respondent has made threats that he will effect additions, alterations and repairs in the demised shop, to which he has got no title, right or interest to do so.

The appellant in the written statement has raised a plea that the respondent has withdrawn his plea of ejectment on the ground of building

being unfit and unsafe for human habitation. However, it is not very clear on record if plea raised by the appellant in this regard is correct. Nevertheless, it is an admitted position of the case that eviction petition was filed by the respondent on the grounds of non-payment of rent, the appellant/tenant being guilty of subletting, additions, alterations in the premises and building being unfit and unsafe for human habitation. The application for eviction was allowed by the Rent Controller, Amritsar but the judgment passed by said Court was set aside in appeal, available on record. There is no dispute about the fact that the revision preferred by the respondent to assail the judgment passed by the appellate Court has been dismissed *in limine*. As plea of the respondent that building in dispute has become unfit and unsafe for human habitation stands rejected in eviction proceedings and said plea is the basis of suit for injunction, plea of the respondent that he has a cause of action to file the suit is rendered infructuous in the circumstances, thus disentitling him to relief of injunction.

This brings the Court to the findings recorded by the appellate Court that the appellant has made additions and alterations in the tenancy premises and thus, is guilty of overt act, entitling the respondent to seek injunction against him. It is surprising that the appellate Court, in para 19 of the judgment, has held that stand of the respondent is specific but after filing the suit as per pleadings and evidence led by the plaintiff (respondent), it has come on file that the defendant/appellant has raised a boundary wall, changed the roof of parshati and also made floor without consent of the plaintiff/respondent. There is not even a whisper much less plea in the plaint that the tenant had made any addition/alternation much less additions referred

to by the appellate Court. The Court in the same very para has made reference to admission made by the appellant/defendant in his cross examination as DW5. It has been held that the appellant (DW5) admitted that backside boundary wall is reconstructed after demolishing earlier one. This finding of the appellate Court is in complete contradiction to what has been deposed by Niranjana Singh (DW5). As per settled position in law, statement of a witness is to be read as a whole and reading a part divorced of remaining statement would be contrary to settled principle of interpretation of evidence and may lead to miscarriage of justice.

Niranjana Singh filed his affidavit Ex. DW5/1 in his examination-in-chief and reiterated his version set up in the written statement. In his cross examination conducted on 16.01.2007, he has categorically denied various suggestions put to him in regard to making of certain additions/alterations in the shop in question. A relevant extract from his statement reads as follows:-

“It is wrong that in last February, 2002, the roof of the barsati has been reconstructed after demolishing it. The backside wall has been constructed afresh after demolishing. It is wrong that floor has been made afresh. It is wrong that I have affixed two doors afresh in the store and shop.”

The appellate Court failed to appreciate correctly that the answer in regard to construction of backside wall after demolishing, is in continuation of the earlier answer denying that in the last of February, 2002, roof of barsati has been laid afresh after demolishing. The appellate Court for the reasons best known, picked up a single sentence out of the aforesaid extract to hold that the appellant has admitted that back side boundary wall was reconstructed

after demolishing the earlier one. There is no reference in the statement to boundary wall as it only refers to backside wall.

As has been noticed hereinbefore, the plaint does not make reference to any addition or alternation in the shop in question. On the contrary, it is a categorical plea of the respondent that the appellant is attempting to make additions/alterations with a view to defeat his right to seek eviction on the ground of building being unfit and unsafe for human habitation. Not only this, the respondent appeared in the witness box after examination of Gurcharan Singh (PW1), Mukhtiar Singh(PW2), Subash Chander (PW3), who have deposed that the appellant made additions and alterations in the shop in question. The respondent tendered into evidence his affidavit Ex. PW4/1 that is conspicuously silent if the appellant has made any addition/alternation in the shop in dispute during pendency of the suit or after grant of stay. The statement of the respondent does not corroborate the statements of his witnesses in regard to additions/alterations. There is nothing on record to suggest that the respondent filed an application before the trial Court for taking note of subsequent events. It appears that the respondent filed an application under Order 39 rule 2-A of the Code of Civil Procedure for initiating action against the appellant for violating stay order passed by the trial Court. Neither the said application is available on record nor there is any material to suggest what was the fate of the contempt proceedings.

This brings the Court to the statements of the witnesses examined by the respondent, basis of the findings by the appellate Court that the appellant has made additions/alterations in shop in question.

Gurcharan Singh (PW1) has deposed that *in the month of March,*

despite grant of stay, the defendant/appellant has constructed a new boundary wall, changed the roof of barsati and laid new flooring. In cross examination, he has deposed that *barsati was constructed about 20 years ago. After barsati was constructed, no construction was raised in shop in question. I do not know when flooring of shop in question was laid. Again said, it was laid 15-20 years ago. The boundary wall was constructed 10-11 years ago. The shutter is affixed in front of shop in question 10-12 years ago.* In view of the facts elicited in cross examination of Gurcharan Singh (PW1), it is difficult to sustain findings of the appellate Court that Gurcharan Singh (PW1) proves any overt act on the part of the appellant.

Mukhtiar Singh (PW2) and Subash Chander (PW3) tendered into evidence their respective affidavits, Ex.PW2/A and Ex.PW3/A. The affidavit filed by Mukhtiar Singh and Subash Chander are verbatim the same without difference of a full stop (.) or comma's (,), sufficient to hold that the affidavits were not prepared on the instructions of witnesses but the same were prepared at the instance of one person, maybe, the respondent or his counsel. This fact goes a long way to impeach the authenticity and correctness of the facts deposed by them.

Mukhtiar Singh (PW2) in the concluding para of his affidavit has deposed about additions, alterations by the appellant. A relevant extract from his affidavit reads as follows:-

“That in the last week of February 2002 defendant unauthorisedly made additions, alterations/reconstructions in the demised shop. The defendant has reconstructed the entire roof of the Barsati after demolishing the same and has also constructed new

parapet over the demised shop. The defendant has reconstructed one of the walls of the store and replaced hind door of the shop as well as the walls of the shop was cement plastered. The defendant has also replaced flooring in the store and laid new flooring as well as the back side of the demised shop. All these additions alterations/ reconstructions were made by the defendant without written or otherwise consent of the plaintiff. I used to visit the shop i.e. demised premises for taking tea etc from the shop of Niranjana Singh as I am residing in this locality for the last more than twenty years.”

In cross examination, he has deposed that *there is construction of roof of shop in question, but there are parapet walls. The appellant has demolished parchhatties and nothing else and has reconstructed a wall at back side. He has made pakka flooring at backside of shop in question and has not made any other thing. He demolished parchhatties in the month of Feb. 2002.* The affidavit Ex PW2/A does not mention about demolishing of parchhatties. He has not reaffirmed his statement in regard to reconstruction of the entire roof of the Barsati after demolishing the same by stating that the appellant has demolished parchhatties and nothing else. The material contradictions in the stand of Mukhtiar Singh in his examination in chief vis a vis his cross examination have not been noticed by the appellate Court, therefore, the appellate Court is guilty of failing to appreciate the evidence properly and in right earnestness.

Subash Chander (PW3), during cross examination, has deposed that *the appellant has constructed floor of the shop in question of bricks and cement on 25.02.2002 during night hours.* His statement in this regard does not

find corroboration from the testimonies of Mukhtiar Singh (PW2) and Gurcharan Singh (PW1).

As has been noticed earlier, Gurcharan Singh (PW1) has deposed in cross examination that flooring of the shop was laid about 15-20 years ago and this fact runs contrary to the testimony of Subash Chander (PW3). There is no expert witness examined by the respondent to prove that the appellant has made any addition/alternation in the shop in the year 2002 and that too after grant of stay order by the Court.

Daulat Ram (DW1) was suggested that in February 2002, *the appellant has raised new banera, floor, rear and right hand side wall and store*, that is contrary to what has been deposed by the witnesses of the respondent. Satwinder Singh (DW3) was suggested *that wall of the store has been removed by the appellant* which is again contrary to the facts deposed by witnesses of the respondent. A similar suggestion was put to Sucha Singh (DW4).

Niranjan Singh (DW5) was cross examined at length in two sittings. Nothing tangible and material has been elicited during his cross examination to support the findings of the appellate Court that the appellant has made additions and alterations in the shop in question.

In view of what has been discussed here-in-before, the inevitable conclusion is that the findings recorded by the appellate Court qua additions and alterations in the demised premises are unfounded, result of non-application of mind and misreading of evidence. The very fact that statement of the respondent is silent about any additions or/and alterations having been made by the appellant goes a long way to negative his claim. In view of the

above, it can be safely held that the findings recorded by the first appellate Court qua the appellant being guilty of overt act by making additions and alterations in the property in question and thus entitling him to seek injunction are perverse and liable to be set aside. As a result, the point raised for consideration is answered in favour of the appellant and against the respondent.

In view of what has been discussed hereinabove, the appeal is allowed, the judgment and decree dated 01.05.2009 passed by the appellate Court is set aside. As a natural corollary, the judgment passed by the learned trial Court is restored. No order as to costs.

(Rekha Mittal)
Judge

18.01.2016
mohan bimbura

