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

**RSA-493-2012 [O&M]**

**Date of Decision : March 21<sup>st</sup>, 2016**

Narender Kumar [deceased]  
through his L.Rs.

.... Appellant

Versus

Amar Lal

.. 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. Jagdish Manchanda, Advocate,  
for the appellant.

Mr. Akshay Jindal, Advocate,  
for the respondent.

**SHEKHER DHAWAN, J.**

Present Regular Second Appeal by the plaintiff is directed against the judgment and decree dated 28.3.2011 passed by Additional District Judge, Kurukshetra, whereby judgment and decree dated 6.11.2008 passed by Additional Civil Judge [Senior Division], Pehowa was set-aside and the suit of the plaintiff was dismissed.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal; that plaintiff - Narender Kumar had filed a suit for declaration and

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for recovery of arrears on the plea that he is owner of a steel khokha measuring 9 x 17 sq. feet. The said khokha alongwith the land underneath the khokha was taken on rent at the rate of Rs.300/- per month in the year 1998. Earlier the defendant used to make payment of rent, but thereafter stopped the payment of rent and the plaintiff claimed an amount of Rs.10,800/- as arrears of rent. The plaintiff also took the plea that the defendant changed the shape of steel khokha by way of putting a steel shutter in place of a wooden door without the consent of the landlord. Oral request and issuance of legal notice under Section 106 of Transfer of Property Act, 1882 [for short, "the Act"] dated 31.7.2004 was to no effect and as such, suit before the Court of first instance.

4. The defendant contested the suit, *inter alia*, taking the plea that the khokha was constructed by him with his own expenses and he had purchased the material for the purpose. The house of Jagdev is on the back-side of the khokha. As per the defendant, the khokha in dispute is not on the land of the plaintiff and the site plan produced by the plaintiff is incorrect. In fact, the defendant is owner in possession of the said khokha. The electricity connection is also in the name of brother of the defendant, and prayed that the suit be dismissed.

5. On these pleadings of the parties, the Court of first instance settled the issues. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance decreed the suit of the plaintiff on the ground that the plaintiff has been able to prove that he is owner of the steel khokha and is also entitled to Rs.10,800/- from the defendant and the plaintiff was also held entitled to possession of the same

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subject to deposit of court fee on the aforesaid amount within a period of 30 days from the date of judgment.

6. The defendant preferred an appeal before the Court of first Appeal and the first Appellate Court reversed the findings of the Court of first instance and accepted the appeal thereby dismissing the suit of the plaintiff. As such, the present Regular Second Appeal.

7. After hearing learned counsel for the parties, the following substantial question of law arise for determination by this Court :-

Whether the Court of first Appeal misread and mis-appreciated the evidence which resulted into erroneous findings?

8. Learned counsel for the appellant submitted that the Court of first instance had recorded findings on the basis of available evidence and the Court of first appeal reversed the said findings without any reason. The Court of first Appeal reversed the findings mainly on the ground that there was no lease deed nor any rent receipt was produced. The Court of first Appeal also returned findings that report of Local Commissioner, Ex. P3 could not be made the basis as no notice was served upon the parties and the visit of Local Commissioner was not in the presence of the defendant, which are factually incorrect. In fact, notice was issued to the defendant by the Local Commissioner and the defendant was actually present on the spot, but he refused to sign the presence memo. As per the revenue record, i.e. copy of Jamabandi for the year 1999-2000, Narender Kumar is the owner of the land as per copy of Khasra Girdawari, the entry of the property has been shown to be *gair mumkin* house and shop and in the possession of the owner. As per statement of PW-1, Narender Kumar, the khokha is in between the shops and the Court of first Appeal completely

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ignored this fact while reversing the well-reasoned findings recorded by the Court of first instance.

9. Learned counsel for the appellant also took the plea that the sale deed was executed during the pendency of the litigation and the same is not going to effect the rights of the present appellant to seek ejectment of respondent, the status of respondent is not going to be of a co-sharer. The respondent is bound to surrender the possession of the suit property.

10. Learned counsel for the appellant also submitted that law on the point is settled that one of the co-owners can maintain the suit if there is no clash of interest between the co-owners and consent of other co-owners is assumed as taken. On this point, reliance was placed on the judgments from Hon`ble Supreme Court in **FGP Limited v. Saleh Hooseini Doctor and Another 2010(1) AIR [Bom.] R 225** and **Pramod Kumar Jaiswal and others v. Bibi Husn Bano and Others 2005(2) RCR (Civil) 629.**

11. Learned counsel for the appellant also took the plea that owner of the property can maintain a suit for eviction because the owner is always the landlord and even if he/she fails to prove the relationship of landlord and tenant, he continues to be landlord of the property. Reliance has been placed on the judgment of a Coordinate bench of this Court in **Romesh Kumar alias Mesha v. Rama Kumari alias Rama Kundra 2010(3) RCR (Civil) 559.** On the same point, reliance was further placed on the judgment of Hon`ble Delhi High Court in **Smt. Sushila Prasad v. M/s Harsha Tractors Limited and Another 1995(1) Civil Court Cases 642 (Delhi)**, where view was taken in case of non-delivery of vacant possession, the landlord is entitled to recover damages for use and occupation as well.

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12. Learned counsel for the appellant further submitted that if there is more than one owner of the property and even if tenant purchases part of the premises from some of the co-owners, their tenancy rights would not merge with ownership. In **T. Lakshmipathi and Others v. P. Nithyananda Reddy and Others** 2003(3) RCR (Civil) 305, Hon`ble Supreme Court while discussing the rights of the co-owners, observed in para No.24 as under:-

“Co-owners – Law with regard to property held by several co-owners:-

- (i). Where any property is held by several co-owners, each co-owner has interest in every inch of the common property, but his interest is qualified and limited by similar interest of the other co-owners.
- (ii). One co-owner cannot take exclusive possession of the property nor commit an act of waste, ouster or illegitimate use, and if he does so he may be restrained by an injunction.
- (iii). Co-owner may, by an arrangement, expressed or implied, with the other co-owners, possess and enjoy any property exclusively. Such a co-owner can also protect his possession against the other co-owners and if he is dispossessed by the latter, he can recover exclusive possession.”

13. While arguing on this point, learned counsel for the respondent submitted that the Court of first Appeal has rightly accepted the appeal and dismissed the suit of the plaintiff because the onus was lawfully upon the plaintiff to prove his case and for that purpose, he was required to prove the relationship of landlord and tenant, otherwise the suit for possession cannot be decreed. On this point, reliance was placed on the judgments of Hon`ble Supreme Court in **Rangammal v. Kuppuswami and Another** 2011 AIR (SCW) 3428, **Bishwanath Agarwalla v. Sabitri Bera and Others** 2009(15) SCC 693.

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14. Learned counsel for the respondent also submitted that in the present case, plaintiff failed to establish the identity of the property and as such, suit for possession cannot be decreed. Reliance was placed upon a judgment of a co-ordinate Bench of this Court in **Jarnail Singh and Another v. Ram Singh 2000(1) PLR 224.**

15. Learned counsel for the respondent finally submitted that in the present case, the Local Commissioner had not submitted the report as per norms prescribed by this Court as detailed in Volume I, Chapter I of High Court Rules and Orders, because the defendant was not associated at the time of demarcation and the report of Local Commissioner is not reliable in the eyes of law. On this point, reliance was placed upon judgment of a co-ordinate Bench this Court in **Mahabir and Another v. Surta and others 2006(2) RCR (Civil) 153.**

16. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the plaintiff had come with the plea that suit property, i.e. Steel khokha was let out to the defendant on payment of rent of Rs.300/- per month. Earlier the defendant used to make payment of rent, but later on he stopped to make the payment and it was a case of oral tenancy. As per the plaintiff, he is co-owner of the property and as such, is a landlord of the property. The defendant failed to deliver the possession despite issuance of notice under Section 106 of the Act and the plaintiff is entitled to possession of the same and for recovery of amount and the Court of first Instance rightly decreed the suit. The said finding was reversed by the the Court of first Appeal without any reason. the Court of first Appeal recorded erroneous findings of fact that even the report of Local Commissioner was

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without any notice to the defendant, whereas it had come in the statement of the Local Commissioner and from perusal of report, Ex. P3, that the Local Commissioner visited the spot as per orders of Naib Tehsildar, Ismailabad dated 15.03.2007. At that time, even Patwari Halqa was present alongwith record. Both the parties were issued advance notices and they were present at the spot. Killa No. 2708/2 measuring 0 Kanal 10 Marlas was seen at the spot and the measurement was done through Jarib and scale. Vide mutation No. 3531, the land measuring 0 Kanal 10 Marlas belong to the owners and the demarcation was done as per the instructions of the FCR and in the attendance memo, Ex.P5, Amar Singh refused to put his signatures, though he was present at the spot and demarcation was done in his presence. That way, the Court of first instance rightly placed reliance upon Ex. P3 as the Local Commissioner was appointed as per orders of the Naib Tehsildar and the spot inspection was done in the presence of the parties, though defendant-respondent – Amar Lal refused to sign the attendance memo and even advance notice was given and the Court of first Appeal recorded erroneous finding which is against the record.

17. As per revenue record, i.e. copy of jamabandi and khasra girdawari, possession is of the plaintiff alongwith other owners. Law on the point is settled that suit for possession by one of the co-owners is maintainable for eviction of tenant and such a view as taken by Hon`ble Apex Court in **FGP Limited's case [supra]**. More so, as per view taken by this Court in **Romesh Kumar alias Mesha's case [supra]**, the owner is always the landlord. As per view taken by Hon`ble Supreme Court in **T. Lakshmipathi's case [supra]**, even if a tenant purchases part of the

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premises from some of the co-owners, their tenancy right would not merge with the ownership and the owner, who inducted the tenant, is entitled to evict them, because if the property is held by several co-owners, each co-owner has interest in every inch of the common property. Such a co-owner can also protect his possession against other co-owners.

18. It is not disputed in any way that the plaintiff is required to prove his own case and in the case in hand, the plaintiff has been able to prove that the defendant was given a *kiosk* [Khokha] on rent on the basis of oral tenancy, but he failed to deliver the possession and also failed to make payment of rent or any amount for use and occupation and possession was not delivered to the plaintiff despite issuance of notice under Section 106 of the Act. The plaintiff has been able to prove his case by leading positive evidence before the Court of first instance and the Court of first Appeal misappreciated the evidence which resulted into erroneous findings. As such, the findings recorded by the Court of first Appeal are erroneous because of mis-appreciation of evidence and the judgment and decree dated 28.3.2011 passed by Additional District Judge, Kurukshetra are set-aside and the judgment and decree dated 6.11.2008 passed by Additional Civil Judge [Senior Division], Pehowa are restored. The question posed in Para No. 7 above is answered in favour of the plaintiff-appellants.

19. The present appeal stands allowed in the above terms.

**(SHEKHER DHAWAN)**  
**JUDGE**

**March 21<sup>st</sup>, 2016**  
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