

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

**RSA No.5174 of 2012 (O&M)
Date of Decision-08.01.2016**

Jagdish

... Appellant

Versus

Ram Kumar and another

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Rupinder Kaur Thind, Advocate for the appellant.

Mr. Kulwant Singh, Advocate for the respondents.

RAJ MOHAN SINGH, J.

[1]. Defendant is in second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for possession by way of ejectment.

[2]. Plaintiffs filed a suit for possession by way of ejectment against Jagdish in respect of house as detailed in the head note of the plaint on the allegations that plaintiffs are owners of the house marked by letters ABCD as shown in the site plan.

[3]. Plaintiffs have purchased the said plot from one Satwinder Singh son of Atma Singh, resident of village Dahar vide agreement to sell dated 25.07.2001 duly executed by Satwinder Singh in favour of plaintiffs. Satwinder Singh agreed to sell the said

plot @ Rs.750/- per sq. yards and received Rs.40,000/- as earnest money. Satwinder Singh again received Rs.80,000/- from the plaintiffs and delivered the physical possession of the plot in question. Satwinder Singh again received Rs.30,000/- from the plaintiffs on 30.10.2001 and in this way, plaintiffs have paid Rs.40000/- in excess of the entire sale consideration to Satwinder Singh.

[4]. Satwinder Singh did not execute the sale deed in favour of plaintiffs, despite repeated requests and thereafter, plaintiffs raised construction over the plot in question. Plaintiffs are in possession over the suit property under the agreement to sell. In December 2002, plaintiffs rented out the house ABCD to the defendant @ Rs.750 per month and in this way defendant became the tenant of the plaintiffs over the portion shown as ABCD in the site plan. Defendant has not paid the rent to the plaintiffs for the period of 28 months i.e. January 2003 to April 2005 and therefore he is in arrears of Rs.21,000/-. Plaintiffs served a legal notice and terminated the tenancy of the defendant and defendant being in unauthorized possession is liable to be ejected and vacant possession of the house is required to be given to the plaintiffs. With this background, suit came to be filed.

[5]. Suit was contested by the defendant. Factum of acquiring title by the plaintiffs by the dint of agreement to sell, payments made thereof has been admitted besides the construction raised by the

plaintiffs over the site in question. Defendant has contended that plaintiffs have sold 200 sq. yards along with constructed house including the suit property and handed over the possession thereof to one Som Nath son of Dewan Chand resident of Babarpur and received a sum of Rs.1,95,000/- from said Som Nath along with one piece of land measuring 230 sq. yards situated in the area of Gaddiwara near NFL, Rajbaha bounded by street in front thereof and land of Rajbaha on back side. Plaintiffs have obtained possession of said plot from Som Nath. Plaintiffs have made construction over the said piece of land measuring 230 sq. yards.

[6]. Defendant also alleged that Som Nath further sold the suit land out of the area of 200 sq. yards purchased by him from the plaintiffs to the answering defendant vide agreement to sell dated 07.08.2003 for a lawful consideration and also handed over the possession to the defendant on the spot. The sale price of the plot was Rs. 1,91,000/- out of which an amount of Rs.1,00,000/- has been paid to Som Nath and remaining Rs.91,000/- were agreed to be paid by the defendant. The defendant is in possession of the property being owner. The sale deed was to be executed in favour of the defendant as and when desired. Defendant further denied that plaintiff Ram Kumar has made writing that he had exchanged his house at Binjol Road along with one plot in Ganesh Vihar colony near NFL with Som Nath and further agreed that his electric meter No.SM-949 was in existence with the house and he had obtained Rs.25,00/- in cash from Som Nath and thereafter, nothing was due

and payable by Som Nath. Defendant contended that plaintiffs have no concern with the suit property as defendant was not inducted as tenant by the plaintiffs. There is no relationship of landlord and tenant.

[7]. On the basis of pleadings of the parties, trial Court framed the following issues:-

“1. Whether the plaintiffs are entitled to a decree for possession by way of ejectment as prayed for on the ground as averred in the plaint? OPP

2. Whether the plaintiff has no locus standi to file the present suit? OPD

3. Whether no cause of action accrued in favour of the plaintiff to file the present suit? OPD

4. Relief.”

[8]. Parties led their respective evidence to prove their case. Trial Court under issue No.1 held that plaintiff is entitled to get possession by way of ejectment of defendant from the premise in question and is also entitled for recovery of Rs.21,000/- as arrears of rent from January 2003 to April 2005. On the basis of findings recorded under issue No.1, suit was decreed by the trial Court vide judgment and decree dated 10.03.2010. Defendant remained unsuccessful before the Lower Appellate Court also. That is why the present appeal came to be filed in this Court.

[9]. In the present appeal, defendant-appellant has formulated following substantial questions of law:-

“1. Whether the suit for possession simpliciter filed by the respondents was maintainable in view of their imperfect title because of absence of registered sale deed in their favour of further agreement to sell executed by the respondents in favour of Som Nath?

2. Whether the respondents to deny the documents Ex.D1 and D2 when the signatures on the same were admitted and the plea of fraud/misrepresentation was not taken in the plaint although the stand of the appellant/defendant was known to the respondents in view of reply to the notice sent by the appellant to the respondents?

3. Whether in a case based on title, the onus to prove the undisputed title was upon the plaintiff (respondent) and since the title was disputed it was for the plaintiff to prove his title to the hilt?

4. Whether the findings given by the Courts below with regard to title to the suit property and the right of the plaintiff to get possession are based upon misreading, mis-appreciation of evidence?

5. Whether both the Courts below have wrongly applied separate yard sticks to weigh the evidence led by the plaintiff and the defendant”?

[10]. I have heard the learned counsel for the parties and have also perused the material on record.

[11]. The contention of defendant is that he was never inducted as a tenant by the plaintiffs, rather he is in possession of the house in question having purchased the house from one Som Nath who had obtained the house in question from the plaintiffs in

exchange and in lieu thereof Som Nath had paid an amount of Rs.1,95,000/- and plot measuring 230 sq. yards to the plaintiffs, therefore, plaintiffs have no concern with the suit land.

[12]. There is admission on the part of defendant in the written statement inasmuch as that the plaintiffs have purchased the land from one Satwinder after making entire sale consideration and thereafter, constructed the house in question on the property. Admittedly, defendant is in possession of the house in question and nothing is proposed with regard to ownership of the house in question as well as the tenancy of the defendant over the demise premises. The contention of the defendant is that he had purchased the house from Som Nath vide agreement to sell dated 07.08.2003 Ex.D3. Perusal of Ex.D3 reveals that there is no mentioning about that, Som Nath had obtained the same from plaintiffs in exchange to prove the agreement to sell Ex.D3. Defendant has appeared and none of the attesting witness has been examined by him. Therefore, agreement to sell Ex.D3 is not proved on record to prove that defendant had purchased the house in question from Som Nath for a consideration of Rs.1,91,000/- and an amount of Rs.1,00,000/- was paid to Som Nath. Som Nath has already expired. Defendant could have summoned the legal representatives of Som Nath to prove the agreement to sell but the agreement to sell Ex.D3 remained unproved. Defendant has also denied that Som Nath had obtained the house from plaintiffs in exchange in lieu of

Rs.1,95,000/- and a plot measuring 230 sq. yards. Ex.D1 is the original agreement.

[13]. Plaintiff Ram Kumar admitted his signatures on the agreement but the contention of Ram Kumar is that his signatures were obtained by Som Nath on blank paper. Som Nath was a property dealer and he had purchased the property underneath the house from Som Nath. Perusal of agreement Ex.D1 shows that date of execution is not mentioned. None of the witness of the agreement has come forward to prove the agreement Ex.D1. The statement of DW 1-Chaman Lal has been pressed into service by the defendant but the statement of DW 1 Chaman Lal is not helpful to the defendant. Moreover, the contents of the agreement Ex.D1 are contradictory to the other evidence produced by the plaintiffs as well as by the defendant. Agreement Ex.D1 recited that plot measuring 230 sq. yard was given by Som Nath to the plaintiffs but no documentary evidence has been proved by the defendant to prove the identity of the plot.

[14]. The original sale deed Ex.P1 executed by DW 1 Chaman Lal on 05.04.2004 has no nexus with agreement Ex.D1 as Chaman Lal was not party to the said agreement Ex.D1. Sale deed Ex.P1 was independent transaction between plaintiff and Chaman Lal, perusal thereof reveals that possession of plot measuring 235 sq. yards was given to the plaintiff by Chaman Lal on the date of execution and registration of the sale deed on 05.04.2004, whereas

perusal of Ex.D1 reveals that plot measuring 230 sq. yards was given to the plaintiff by Som Nath when agreement Ex.D1 was executed. No date is forthcoming on the agreement Ex.D1, however perusal of receipt Ex.D2 reveals that Ex.D1 was allegedly executed prior to 21.02.2003 because receipt Ex.D2 was executed on 21.02.2003. When the possession of plot measuring 230sq. yards was given to the plaintiff by Som Nath prior to 21.02.2003 then how plaintiff had obtained the possession of the plot measuring 235 sq. yards on 05.04.2004.

[15]. Written statement reveals that defendant is owner in possession of the suit property in lieu of agreement to sell dated 07.08.2003. It means that defendant came into possession of the house in question on 07.08.2003 but perusal of agreement Ex.D3 reveals that possession of the house in dispute was given to the defendant at the time of execution and registration of the sale deed.

[16]. Apparently no sale deed was executed in the present case in favour of the defendant. When no sale deed was executed then how defendant came into possession of the house in question. The ownership in respect of suit land has been denied by the defendant in the cross examination. He has stated in his cross examination that after the filing of the present suit he came to know that Som Nath was not owner of the house in dispute and he did not make the payment of Rs.80,000/- to Som Nath. Once the defendant himself has stated that Som Nath was not the owner of the house then how he could claim the ownership of house in question through

Som Nath. The debate of possession has not been specifically pleaded as to when the defendant came to possession of the house. Plaintiff has admitted his signatures on the agreement Ex.D1 but it is proved on record that the same was not executed between plaintiff and Som Nath. Plaintiff never exchange the property with Som Nath nor obtained any property in lieu thereof. Defendant is in possession of the property and the possession was not delivered to him by Som Nath and this fact has been admitted by the defendant himself. Defendant has not proved his ownership qua the house in dispute.

[17]. In the light of aforesaid discussion, it can be gathered that defendant was inducted as tenant by the plaintiff. Defendant has failed to produce any evidence to prove the payment of rent, rather he has denied the relationship of landlord and tenant with the plaintiffs. The tenancy of the defendant was terminated by the plaintiff by serving a legal notice. After termination of the tenancy of the defendant, the possession of the defendant is that of trespasser. No cogent evidence has come forth on record in respect of rate of rent. Keeping in view the prevailing rate of rent, the same is held to be reasonable and was assessed accordingly. The cumulative effect of aforesaid discussion does not provide scope for considering any question of law as formulated by the appellant in the grounds of appeal. Defendant could not have denied the title of the plaintiffs once he has denied the factum of taking possession of the demise premises from Som Nath. Questions No.1 and 2 are not the question of law much less substantial question of law. As regards

question No.3, it is not the title which is relevant consideration for filing suit for possession by way of ejectment. The concept of landlord is different than the owner. Even in case of present nature, plaintiff is proved to be owner. Since defendant has failed to prove that he has obtained possession from Son Nath by dint of a transaction, therefore, he has to be dislodged by way of decree, which according to this Court is lawful decree for ejectment. Question No.5 is a question of fact only.

[18]. Having considered the controversy in detail, this Court is of the opinion that no lawful point worth consideration is involved in this appeal. Both the Courts below have rightly concluded in favour of the plaintiffs, therefore no interference is called for in this appeal and the same is accordingly dismissed.

[19]. Since, main appeal has been decided on merits, therefore, no order is required to be passed in CM Nos.14774-75-C of 2012.

08.01.2016
Prince

(RAJ MOHAN SINGH)
JUDGE