

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

RSA-2141-2016 (O&M)

Date of decision: 02.05.2016

Naresh Kumar and others

...Appellants

Versus

Tarsem Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Jayender S. Chandail, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J.(ORAL)

CM-5659-C-2016

Prayer in this application is for exemption from filing the certified copy of the judgment and decree passed by the trial Court and for permission to file true typed copy of the said judgments and decrees.

Allowed, as prayed for.

RSA-2141-2016 (O&M)

Challenge in this appeal is to the judgment and decree dated 05.03.2012 passed by the Civil Judge (Junior Division), Gurdaspur, whereby the suit for possession of the shop marked as FCDE by demolishing the wall 'GC' as shown in the red colour and as detailed in the head note of the suit situated at Kabutri Gate, G.T. Road, Gurdaspur within the revenue estate of Municipal Limits, Gurdaspur as per the site plan attached with the suit with consequential relief of permanent injunction restraining the respondent-defendants from interfering in any manner whatsoever in the peaceful possession of the

appellant-plaintiffs stands dismissed, appeal against which preferred by the appellant-plaintiffs has also been dismissed by the Additional District Judge, Gurdaspur on 14.01.2016.

2. It is the contention of learned counsel for the appellants, that admittedly the shop in question was rented out to the father of the appellants by the Municipal Council, Gurdaspur-respondent/defendant No.2. The tenancy was, thus, in his name. On his death, the tenancy was inherited by the appellant-plaintiffs. A partnership was entered into between the appellant-plaintiffs and respondent-defendant No.1/Tarsem Kumar which partnership was dissolved vide dissolution deed dated 23.02.2004. After dissolution of the partnership, respondent-defendant No.1 continued with the business. In the said dissolution deed, there was nothing mentioned with regard to tenancy and therefore, the appellant-plaintiffs continued as tenants of the shop in question. He, thus, contends that the suit for possession as prayed for should have been decreed in the light of the fact that respondent-defendant No.1 is in illegal possession of the said shop. It has been, thus, asserted that the judgments and decrees passed by the courts below cannot sustain and deserves to be *set aside*.
3. I have considered the submissions made by learned counsel for the appellants and with his assistance, have gone through the impugned judgments.
4. The factum of the shop having been initially rented out to Satpal, the father of the appellant-plaintiffs by the respondent-defendant No.2-Municipal Council, Gurdaspur is not in dispute. Said Satpal expired on

21.08.2001 and on his death the appellant-plaintiffs became tenants of the said shop. A partnership deed dated 31.12.2001 was entered into between the appellant-plaintiffs and respondents-defendant No.1 Tarsem Kumar for running hardware business on 31.12.2001. Subsequently, dissolution deed was executed on 23.02.2004. Respondent-defendant No.1 Tarsem Kumar continued with the said business of hardware in the shop in question. The appellant-plaintiffs asserted their right of tenancy and wanted the possession of the shop and for the said purpose had filed the present suit by asserting that in the dissolution deed dated 23.02.2004, there was no mention of the tenancy having been surrendered by the appellant-plaintiffs.

5. In the dissolution deed dated 23.02.2004, it was mentioned that the appellant-plaintiffs have left all assets and liabilities of the firm in favour of the respondent-Tarsem Kumar and also had sold the goodwill of the firm to him in exchange of 50% of the amount towards their shares as per accounts of the firm. A letter dated 23.02.2004 it was written by the appellants that they would have no objection if the rent note is recorded in the name of respondent-defendant Tarsem Kumar by the Municipal Council, Gurdaspur. The letter dated 23.02.2004 has been admitted to have been written by the appellant-plaintiffs in the cross-examination.

6. In the light of the above facts and keeping in view the conduct of the parties, it is apparent that the dissolution deed which is dated 23.02.2004 (Ex. D-2) was simultaneously followed by the letter dated 23.02.2004 (Ex. D-3) which clearly shows the intent of the parties i.e.

granting all the left out assets and liabilities in the firm in favour of Tarsem Kumar along with goodwill of the firm in lieu of 50% of the amount which was paid towards their shares as per account of the firm maintained by Tarsem Kumar. Ex.D-2 and D-3 have to be read together as it is a part of the same transaction as is apparent from the dates on which these two documents have been executed which clearly depicts that the tenancy was also intended to be transferred in favour of respondent-defendant Tarsem Kumar. The courts below have rightly taken into consideration both the documents and proceeded to return the findings against the appellant-plaintiffs which cannot be faulted with.

7. No other point has been urged or argued by learned counsel for the appellants.
8. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.
9. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.
10. In the light of the dismissal of the appeal, the application for stay i.e. *C.M. No.5660-C-2016*, stands disposed of as infructuous.

2nd May, 2016
m. sharma

(AUGUSTINE GEORGE MASIH)
JUDGE