

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2356 of 2016
Date of decision : May 11, 2016

Sanjiv Kumar Sharma

..... Appellant

Versus

Nirbhavir Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Aman Bahri, Advocate
for the appellant.

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?

Amit Rawal, J (oral).

The appellant-defendant No.1 is aggrieved of the judgment and decree rendered by the trial court and it merged with the judgment and decree of the lower appellate court and the same was dismissed.

Learned counsel appearing on behalf of the appellant submits that during the pendency of the suit one of plaintiffs filed rent petition on 27.2.2013 against defendant No.2 who had suffered a statement on 7.5.2014 to vacate the premises. On 31.3.2015 the premises stood vacated. However, the only grievance is with regard to order of recovery of mesne profits at the rate of ₹1500/- per month along with interest @ 9% per annum from the date of filing of the suit till the date of decree and further future interest @

6% per annum from the date of decree till its actual realization.

He further submits that Gurbax Kaur initiated criminal proceedings. A statement was suffered vide Ex.P-23 that the premises was lying vacant, at the best, decree qua mesne profits ought to have been against defendant No.2. Plaintiff cannot be approbate and reprobate. In this regard, he has referred the judgment of Hon'ble Supreme Court in **Karam Kapahi & others Vs. M/s Lal Chand Public Charitable and another 2010 (4) SCC 753**, para 61, thereof thus urges this Court for formulating substantial questions of law as carved out in the Grounds of Appeal.

I have heard learned counsel for the appellant and appraised the paper book and case law cited at bar and of the view that the appeal sans merit, for, categoric there is admission of the Gurbax Kaur that she had given Power of Attorney in favour of defendant No.1-appellant who on the basis of power of attorney let out the premises to defendant No.2 but did not render accounts to erstwhile owner Gurbax Kaur, ultimately the property vide sale deed of the year 2007 exchanged hands. In these circumstances, one of the plaintiff had instituted a petition under Section 13-A against defendant No.2 and defendant No.2 admitted the relationship and later on vacated the premises. The relief sought in the plaint now is two fold namely mandatory injunction for handing over the possession as well as suit for recovery of amount, as referred above. The court below has ordered for recovery of mesne profits without realizing that respondent-plaintiff did not lead any evidence to show that the amount realized from defendant No.2 has already parted

possession to Gurbax Kaur, the erstwhile owner. The question of applicability of doctrine of approbation and reprobation would not apply as defendant No.2 admitted the relationship of tenant and landlord and viz-a-viz claim qua right of other plaintiffs, the ratio decidendi culled out in the aforementioned judgment would not be applicable to the facts and circumstances of the case as it is conceded position on record that defendant No.1 had been given premises on rent but further let out the said premises and realized rent from him without any payment to petitioner. The petitioner having left with no other option claimed the occupation charges.

In view of the aforementioned facts, I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

May 11 , 2016
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