

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2570 of 2015(O&M)
Date of decision : March 10, 2016

Joginder Singh

..... Appellant

Versus

Anoop Singh Lamba and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vaibhav Sehgal, 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).
CM No. 13394-C of 2015

C.M.is allowed.

Anenxure A-3 taken on record.

RSA No. 2570 of 2015(O&M)

The appellant-defendant is aggrieved against the concurrent finding of fact whereby the suit for possession of a residential house bearing plot No.35 measuring 48' x 100' bearing MHC No. 1970/XVIII situated at Mohalla Rampura Hisar has been decreed by both the courts below.

Learned counsel appearing on behalf of the appellant-defendant submits that prior to the institution of the present suit, the appellant had filed a suit for injunction whereby a local

commissioner was appointed and the appellant was found to be in possession of two rooms and a kitchen whereas respondents-plaintiffs were in possession of one room. Injunction was sought against the respondents-plaintiffs not to dispossess the appellant except in due course of law as there was relationship of landlord and tenant. However, in the execution proceedings he has taken possession of the entire house instead of confining it to two rooms and a kitchen. Thus, the courts below have exceeded in jurisdiction in proceedings with the execution proceedings viz-a-viz the entire property and urges this court to formulate substantial question of law for adjudication as there is illegality and perversity in the impugned orders, much less the executing court is mis-directed.

I have heard learned counsel for the appellant and appraised the paper book and of the view that the appellant-defendant did not deny the title and identity of the property which has been noticed by the trial court in paragraph 17 which reads thus:-

“17. After hearing the learned counsel for the parties and from the perusal of case file it is crystal clear that there is no dispute that the plaintiffs are owners of the house in question which has been admitted by the defendants in para no. 4 of the written-statement as well as in the cross-examination of DW2 wherein he admitted that the plaintiffs are owners of the house in question. Further, the identification of property is not in dispute as during the course of the arguments, learned counsel for defendants admitted that there is no dispute regarding the identification of property which has been described by way of site plan of house which is annexed as Ex. P20. Further the local commissioner report dated 12.03.2007

is annexed as Ex. PW11/A which is a part of case titled as 'Joginder Singh Vs. Bhaga Devi' . In para no. 4 of the report, local commissioner deposed that at the time of her visit, the room which has been shown as alphabet A was locked and similarly the kitchen was also locked. The key of the room and kitchen was in possession of defendants no. 3 Rohit (son of plaintiff in the present case) who opened the said room and kitchen on her asking, therefore, it clearly shows that on 12.03.2007, the plaintiffs were in possession of Room no. 'A' and kitchen of the house in question. Further, it is proved by the plaintiffs that they departed to Australia and reached there on 1st November, 2006 and came back to India on 14th January, 2007 which is proved by passports of plaintiffs which are annexed as Ex. P18 and Ex. P19. So, the arguments advanced by the plaintiffs that they were not in India at the time of illegal encroachment of the house in question by defendants is proved. Furthermore, the previous suit filed by defendants titled as 'Joginder Singh Vs. Bhaga Devi' which is annexed as Ex. P21 for injunction was declared dismissed in default as the defendants might have found themselves in a weak position, therefore, they got the suit declared as dismissed in default. Further the finding of the trial court corroborates the above mentioned presumption as the trial court held that the defendants who were plaintiffs in that suit have not come to the court with clean hands and are liable to be punished. Furthermore, the contention of the learned counsel for defendants that he is in possession of electricity bills, therefore, a presumption is to be drawn in his favour of the lawful possession of the house in question is not tenable because mere production of electricity bills does not show the defendants to be in lawful possession of the house in

question. Further, the contention of the learned counsel for the defendants that the criminal case regarding illegal possession is decided in their favour and copy of that case is annexed as Ex. D1 is not tenable because as per settled proposition of law findings of criminal court is not binding over findings of civil court. Moreover, it is well settled that the certain essential features have to be proved by the defendants that there is a relationship of landlord and tenant. It necessarily involves the existence of a contract in the form of lease deed or any circumstantial evidence showing that such a contract was in existence. It further requires that possession of the immovable property should be proved by tenant in his capacity as such on payment of rent. Further, in the present case, no material has been placed to substantiate the claim that the defendants were tenants and plaintiffs were owners of house. There is no release deed on rent deed produced on record which could have been a direct piece of evidence establishing the fact of relationship between the plaintiffs and defendants. No rent receipt has been placed on record. All that has been brought on record is the statements of witnesses produced by the defendants which have been controverted by the statements of witnesses of plaintiffs. In the absence of any evidence of tenancy mere exclusive possession by itself does not give right of tenancy. Moreover, relationship of landlord and tenant comes into existence as a result of agreement expressed or implied from the acts and conduct of parties which indicate that landlord intended to divest himself of possession of house and that tenant intended to assume possession. Payment of rent is one of the most important circumstances from which this inference can be drawn. Rent although not essential yet a normal incidence of

tenancy. Further, it is a settled proposition of law that if a defendant alleges tenancy right, onus is upon him to prove the said fact.”

Except a self serving statement viz-a-viz tenancy, no other documentary evidence has been placed on record to show the status of tenant. The plea of having been into possession since 1992 do not co-relate with the requirement of relationship of tenant and landlord and would be immaterial as in the previous suit the contention was not to dispossess the appellant except in due course of law.

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

March 10 , 2016
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