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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3617-2015

Date of Decision : May 24th, 2016

Sanjeev Sharma

.... Appellant

Versus

Balbir Singh

.. Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present Mr. Gopal Sharma, Advocate,
for the appellant.

Mr. K.P.S.Virk, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present Regular Second Appeal by one of the defendants [defendant No.1] is directed against the concurrent findings of both the Courts below, whereby, suit for recovery of Rs. 2,94,000/- filed by Balbir Singh was decreed by Civil Judge [Junior Division], Fatehgarh Sahib vide judgment and decree dated 25.11.2014. The appeal filed by the plaintiff was also dismissed by learned District Judge, Fatehgarh Sahib vide judgment and decree dated 24.03.2015.

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

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2. Relevant facts of the case for the purpose of decision of this appeal; that the plaintiff filed suit for recovery on the basis that suit property was given on rent @ Rs.16,000/- per month to the defendants with effect from 1.8.2011 vide rent note dated 9.8.2011. As per terms of the rent note, there was a stipulation with regard to increase of rent @ 25% per annum. The defendants failed to pay rent with effect from 1.3.2012. Even the rent assessed by the Court was not paid. Ejectment petition was allowed on 21.5.2013 and on that basis, the plaintiff is entitled to recover Rs. 2,94,000/- upto July, 2013.

3. Defendant contested the suit taking the plea that entire payment on account of rent had been made. More so, the defendants had invested Rs. 4.00 to 5.00 lacs and constructed a hall and store in the premises. Defendants had not received any money from the plaintiff qua the construction of hall and store and the plaintiff filed the suit with *mala fide* intention and the same is liable to be set-aside.

4. On the 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 returned the finding that the plaintiff was entitled to recovery of Rs.1,75,000/- with interest @ 6% per annum to be calculated from 1.7.2013 till its realization. The appeal filed before the Court of first Appeal was dismissed. As such, the present Regular Second Appeal.

5. Learned counsel for the appellant submitted that at the time of letting of suit property, the suit property was vacant. More so, as per Ex. P3, i.e. Zamabandi for the years 2006-2007, the suit property was shown

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to be vacant land. As per the lease deed also, the suit property was vacant land. Thereafter, the defendants raised construction of shop which has been duly proved on the file on the basis of documentary evidence Ex.D-4 to D-28 . The appellant defendant shifted to another property in the month of November, 2012 because of harassment by the plaintiff and both the Courts below have completely ignored this fact while passing decree of recovery of money on account of arrears of rent and the said findings are liable to be reversed.

6. Learned counsel for the respondent submitted that possession of the suit property is still with the appellant. It had come in the evidence itself that at the time of letting of the property, construction was in existence on the spot. More so, as per khasra girdawri [Ex.P4] a school is situated in the suit property. Lease deed is not part of the record. Admittedly, the possession is of the appellant and the plea taken by the appellant that he had shifted to some other property in November, 2012 is factually incorrect. The bills produced by the defendant in the evidence have rightly been discarded by the Courts below because the same does not relate to the suit property rather, the same are in the name of Mandav Brothers. Otherwise also, the present Regular Second Appeal being against concurrent findings of fact recorded by both the Courts below is not maintainable as there is no substantial question of law involved in the appeal and the same deserves to be dismissed.

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that there is no dispute that the property was originally let out to the defendants on payment of rent of Rs.16,000/- per month. Thereafter

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defendants failed to make the payment. A petition for ejectment was filed at the instance of the plaintiff and same was allowed on the ground of non-payment of rent vide Ex. P2. Admittedly, the appellant was in arrears of rent.

8. As per version of the defendants, they had spent a sum of Rs.4.00 to 5.00 lacs on construction having been raised on the spot. In support of that, Amardeep Singh was examined as DW-3 who proved bills Ex. D4 to D28. The Courts below have rightly observed that the said bills were in the name of Mandav Brothers. Otherwise also, no site plan was got approved from the Municipal Council by the defendants before raising the construction. This fact has been so admitted by DW-1 in his cross-examination. DW-2 and DW-3 could not produce any bills regarding payment and on that basis, the Courts below observed that the defendants failed to prove that any amount was spent on construction. There is nothing on the record that possession of the suit property was ever handed over to the plaintiff, rather ejectment petition was filed and that was accepted against the defendants. The concurrent findings have been recorded by both the Courts below on the basis of facts and evidence available on the file and there are no ground to interfere and set aside the said findings.

9. As per view taken by Hon`ble Supreme Court in **Deity Pattabhiramaswamy Vs. S. Hanymayya and others, AIR 1959 SC 57,** the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of erroneous findings of fact. As per view taken by Hon`ble Supreme Court in **Commissioner Hindu Religious & Charitable Endowment Vs.**

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P.Shanmugama & Ors., JT 2005 (1) SC 201 and Biswanath Ghosh [Dead] by LRs and Ors. Vs. Gobinda Ghosh alias Gobindha Chandra Ghosh & Ors. AIR 2014 SC 1582, second appeal cannot be entertained if there is no substantial question of law involved therein.

10. In the present second appeal, there is no substantial question of law involved, rather both the Courts below have already appreciated the entire evidence. Hence, the present appeal is not maintainable as per provisions of Section 100 of the Code of Civil Procedure, 1908.

11. In view of the above, the present Regular Second Appeal stands dismissed.

**(SHEKHER DHAWAN)
JUDGE**

May 24th, 2016
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