

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA No.3154 of 2014

Date of decision: 04.03.2016

Pritpal Singh

... Appellant

Versus

Manjit Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.H.S.Dhindsa, Advocate,
for the appellant.

AMOL RATTAN SINGH, J.

1. This is the second appeal filed by the defendant in a suit filed by the respondents-plaintiffs, seeking a decree of possession of one room measuring 12 ft. x 12 ft., on the first floor of a property known as Unit No.B-XVI-33/38, situated at G.T.Road, Miller Ganj, Ludhiana, described in detail in the plaint.

The plaintiffs in the suit also sought recovery of Rs.8750/- by mesne profits, from the appellant, for the illegal and unauthorized use and occupation of the aforesaid premises.

The suit having been decreed in favour of the plaintiffs, and the first appeal filed by the appellant-defendant having been also dismissed, the present regular second appeal has been filed in this Court.

2. The facts of the case set up by the plaintiffs (respondents

herein) are being taken as given in the judgments of the learned Courts below.

As per the case of the plaintiffs, they were owners of the whole property, i.e. Unit No.B-XVI-33/38 and their father-in-law, Tara Singh, through whom the suit was filed as their attorney, was managing the property.

The plaintiffs had purchased the property from one Amar Singh on 10.11.1989. At the time of purchase, as the appellant-defendant was a relative of Amar Singh, he was allowed to place his articles in one room on the first floor, which, it was averred, he undertook to vacate in 10 days. However, in the meanwhile, Amar Singh expired and the appellant did not vacate the property, nor did he ever pay any rent to the plaintiffs. As per the plaintiffs, the appellant-defendant had never paid any rent to Amar Singh or his wife either, at any stage. Thus, though there were three other tenants on the property on the ground floor, it was contended that the appellant was not a tenant.

3. Allegedly, thereafter, the appellant started manipulating documents to claim himself as a tenant and forged some receipts, stated to have been issued by the late Amar Singh. However, it was contended in the suit, that after November 1989, in any case neither Amar Singh nor his wife, Ranjit Kaur, could receive the rent, the property having been purchased by the plaintiffs.

The appellant-defendant, had also filed a suit seeking injunction against the plaintiffs, claiming to be a tenant at Rs.300/- per month.

In fact, it was on that basis, that the value of the property was assessed at Rs.300/- per month for tenancy purposes, by the appellant himself, that mesne profits were sought by the plaintiffs, from him at the rate of Rs.250/- per month from July 1994 onwards, for the illegal usage of the property.

4. Upon notice being issued in the suit, (filed by the respondents herein), the appellant-defendant filed a reply, stating that he was a tenant on the entire first floor of the property since May 1986, at a rent of Rs.150/- per month, which he was paying to Amar Singh, which was later enhanced to Rs.300/- per month. After Amar Singh's death in 1989, his widow, Ranjit Kaur, used to receive the rent. In April 1986, the plaintiffs alongwith Tara Singh and Gurmukh Singh had threatened to dispossess the appellant-defendant, on account of which he filed a civil suit seeking permanent injunction, in which he was granted interim injunction on 03.04.1996, which was later confirmed vide an order dated 14.05.1997. That suit, at the time of filing of the present suit out of which the present appeal arises, was stated to be still pending. (The suit filed by the respondents in this appeal, was instituted on 02.06.1997).

In his written statement he even denied the sale of the property by Amar Singh to the respondents-plaintiffs and contended that the sale deed registered on 10.11.1989 was a forged and fabricated document.

The appellant thus claimed that he was a bonafide tenant in the property, qua the part of the house that was in his possession and as

such he had a right to retain its possession and that the suit filed by the respondents herein, was only a counter blast to the injunction suit filed by him.

5. The following issues were thereafter framed by the learned Civil Judge:-

- “1. Whether the plaintiffs are entitled for possession as prayed for? OPP
2. Whether the plaintiffs are entitled for mandatory injunction as prayed for? OPP
3. Whether the plaintiffs are entitled for recovery of Rs.8750/- as mesne profit? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the plaintiffs have concealed material facts? OPD
6. Whether the plaintiffs have no locus standi to file the present suit? OPD
7. Relief.”

6. The respondents examined six witnesses, including Dilbagh Singh, a Clerk in the House Tax Department of the Municipal Corporation, who proved that on 30.08.1996 the ownership of the property was changed in favour of the plaintiffs, in the municipal record, as per document Ex.P1. He however, stated that the appellant was a tenant on the first floor, at a monthly rent of Rs.300/- per month, as per municipal record.

However, this witness was recalled in rebuttal evidence later, when, on the basis of the record produced by him, he stated that

the appellant was recorded as a tenant for the assessment year 1991-92, on the basis of an affidavit filed by the appellant himself on 18.11.1991.

PW2 was Surinder Pal Singh Saini who proved that he had scribed the sale deed in favour of the plaintiffs (from Amar Singh). One Vinod Kumar appeared to state that his late brother Balbhadar Kumar was a witness to the sale deed (Ex.P2) and that he had also gone with the attorney of the plaintiffs, i.e. with Tara Singh, who obtained possession of the first floor, on which one relative of Amar Singh was staying and had promised to vacate after 10 days but did not honour his promise. This witness stated that he was, in fact, the commission agent who had brokered the deal for the property and was paid 2% commission for his efforts.

7. The attorney of the plaintiffs, who was also their father-in-law, Tara Singh, deposed in terms of the plaint and further stated that though it was purchased in the name of the plaintiffs, it was with his money that consideration was paid, as the plaintiffs were not earning anything.

One Rachhpal Singh, PW5, proved the registration of the sale deed, Ex.P2 and stated that the site plan, Ex.P4, was also as per the record.

8. The appellant-defendant first examined one Piare Lal who stated that he had delivered milk to the appellant-defendant from 1986 till 1992 and that the appellant had taken the property on rent in the year 1986. However, he admitted that no rent was ever paid in his presence.

He also could not give any facts with regard to the occupants of the

shops on the ground floor. Further, he also did not know whether the property was sold to the plaintiffs.

9. One Davinder Kaur also appeared on behalf of the appellant, to state that she was getting visiting cards prepared from him and that he was a tenant on the first floor of the property since 1986. However, she stated that the tenancy was not settled in her presence and she also could not also produce any bill in respect of the visiting cards that she had allegedly got made from the appellant, in connection with her computer business.

Lastly, the appellant examined himself, deposing in terms of his written statement and that he was shown to be a tenant in the municipal record. He further deposed that the tenant settlement took place in the presence of one Sukha Singh of Naveen Engineering Works, who was also a tenant, and that he continued to pay rent to Ranjit Kaur, upto 1995. However, he did not know whether Ranjit Kaur was alive or not. He also admitted that he had never told Ranjit Kaur that the respondents (plaintiffs) had forged a sale deed with regard to her/her husbands' property. He also stated that he never complained to the police in this regard.

10. On the basis of the aforesaid evidence, the learned Civil Judge held that the sale deed, Ex.P2, was a genuine document and that the property was purchased by the plaintiffs, through Vinod Kumar, on 10.11.1989 and that the appellant had not been able to show in any manner that it was a forged document.

As regards the tenancy of the appellant, it was held that

though he was shown to be a tenant in the municipal record, that was simply on the basis of an affidavit that he himself had filed and in any case, entries in the house tax register are only for the purpose of payment of house tax.

11. The learned Civil Judge also recorded a finding that Tara Singh, attorney of the plaintiffs, had produced rent receipts issued by Amar Singh (to other tenants), which were for the period 1986 to 1989 and all had specific numbers and were filled in 'Gurmukhi', with the signatures of Amar Singh on all the receipts. To compare the signatures of Amar Singh, two documents of the Municipal Corporation were also examined, on one of which the signatures of Amar Singh were of the year 1977. It was also noticed that the receipts produced by the defendant, as rent receipts issued by Amar Singh, were all filled in English and that there were tremors on the signatures of Amar Singh, whereas when the signatures on the receipts produced by the plaintiffs were compared with Amar Singhs' signatures on the municipal record, they were found to be in a flowing hand.

It was further held by the first Court that though the appellant had stated that the tenancy was settled in the presence of one Sukha Singh of Naveen Engineering Works, even that person had not appeared to testify in that regard. Further, the appellant had made no effort even to try and trace out the whereabouts of Ranjit Kaur (wife of Amar Singh) and as such he had withheld the best evidence that he claimed in his favour. None of the other witnesses produced by him testified to the rent being paid in their presence, or even of the tenancy

being settled in their presence. Hence, in view of the fact that neither the registered sale deed was proved to be forged in any manner, nor were the rent receipts in favour of the appellant proved to be genuine, the appellant was held not to be a tenant in the suit property and consequently, the plaintiffs were held entitled to get possession back from him.

Accordingly, he was also held liable to pay mesne profits of Rs.8750/-, as claimed by the plaintiffs. The suit was accordingly decreed.

12. The learned first Appellate Court also, after examining the entire evidence, dismissed the appeal on the same ground, further holding that even no legal representatives of Amar Singh had been examined by the appellant to prove that the sale deed was not executed in favour of the plaintiffs by Amar Singh and as such, in terms of Sections 74 and 76 of the Indian Evidence Act 1872, a presumption of truth would be attached to the registered sale deed, Ex.P2.

However, while dismissing the appeal, the first Appellate Court modified the decree to the extent, that the appellant was ordered to hand over the possession of the one room claimed by the plaintiffs, in view of the fact that the entire property was not even the subject matter of the suit.

The payment of mesne profits was also upheld by the first Appellate Court.

13. Before this Court, Mr. H.S.Dhindsa, learned counsel for the appellant, vehemently argued to submit that the rent receipts issued by

the previous landlord of the suit property, Amar Singh, in favour of the appellant, were duly proved before the Courts below. However, he could not deny, on query, that neither was Amar Singh, nor any of his legal representatives, or any other person, examined by the appellant, to prove the genuineness of the rent receipts. He also could not deny, as specifically noticed and held by the Courts below, that no rent receipt in favour of either the respondent-plaintiff, or their predecessor-in-interest Ranjit Kaur, was ever produced to prove the tenancy of the appellant.

14. Hence, though undoubtedly the appellant produced rent receipts stated to have been issued by Amar Singh in his favour, a finding of fact was recorded by the Civil Judge, confirmed by the first Appellate Court, that the said rent receipts did not appear to be genuine, and no legal representative of Amar Singh was produced to prove their genuineness. Further, a finding of fact was also recorded that the rent receipts issued by Amar Singh to other tenants, all carried specific numbers on them and were filled in 'Gurmukhi', whereas the rent receipts produced by the appellant were filled in English.

Thus, there is a finding of fact recorded, that the signatures of Amar Singh on the rent receipts produced by the appellant, were not perfectly matching the signatures of Amar Singh in the municipal record, whereas they were found to be matching on the rent receipts produced by the respondents-plaintiffs.

I find no reason to interfere with that finding, especially when it is seen with the fact that the appellant could examine nobody to prove the tenancy, including the person whom he stated the tenancy was

settled in front of. Other than that, it was the appellants' case that the sale deed by which the respondents-plaintiffs had come into possession of the property, was a forged document. Not even an iota of evidence was led by the appellant to prove the same, and consequently, it being a registered sale deed, the claim of the appellant that it was forged and fabricated was found to be without any truth. This, especially so because neither the widow nor the legal representatives of Amar Singh were ever produced to state that they had not sold the property to the respondents and further, even no complaint had been lodged by the appellant, to the effect that a sale deed had been fabricated by the respondents herein. Obviously, the respondents-plaintiffs were owners of the property as per the sale deed registered in their favour and other than the fact that the appellant tried to set up wholly a false case, thereby completely eroding his credibility, he also could not prove that he had ever paid rent to the respondents-plaintiffs.

15. In view of the above findings, I see no error in the judgments of the Courts below and the decree passed by the learned first Appellate Court.

Consequently, finding no merit in the appeal, the same is dismissed *in limine*, with costs of Rs.5000/-, to be deposited with the Punjab State Legal Services Authority.

04.03.2016

dinesh

(AMOL RATTAN SINGH)
JUDGE