

101

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

**RSA No. 3289 of 2014(O&M)
Date of Decision: 06.09.2016**

Satish

....Appellant

Vs

Mandi Panchayat Dharamshala Trust

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajesh Lamba, Advocate,
for the appellant.

RAJ MOHAN SINGH, J.

[1] Defendant is in second appeal against the concurrent judgment and decrees passed by the courts below.

[2] Plaintiff i.e. Mandi Panchayat Dharamshala Trust, Palwal filed a suit for declaration and possession as a consequential relief on the ground that trust is owner of the shop shown as ABCD in the site plan which was having specific dimensions in the form of boundaries. The defendant was tenant under the plaintiff trust in a shop adjoining to the shop in question. Defendant without the consent of the plaintiff occupied the adjoining shop illegally. With this background, plaintiff sought decree for declaration that the plaintiff trust is lawful owner of the shop in question and the defendant has no right to retain the possession of the same. Plaintiff also sought

recovery of possession of shop in dispute from the defendant besides use and occupation charges.

[3] The suit was contested by the defendant on the ground that the shop in question was part of shop No. 18 which was earlier given to the defendant on tenancy. The size of the shop was claimed to be 32' x 12'6".

[4] After completion of the pleadings of the parties, both the parties led evidence. Trial Court decreed the suit vide judgment and decree dated 01.05.2012. The defendant remained unsuccessful in the appeal before the lower Appellate Court which was dismissed vide judgment and decree dated 01.04.2014. That is how the present regular second appeal came to be filed.

[5] I have heard learned counsel for the appellant.

[6] Learned counsel for the appellant/defendant emphasized the report of the Local Commissioner in which area of shop was shown to be as 32' x 12' in dimension which was in conformity with the stand taken by the defendants. Defendants claimed that the property in question is in his possession for the last 25 years and the same was part of shop No. 18 which was earlier let out to him by the plaintiff.

[7] Stand of the plaintiff was that the shop in dispute was 13' x 10" x 8' in dimension and the defendant had illegally possessed the same about 7 years ago without any right. The suit was filed through authorized person. The defendant unauthorizedly occupied the shop in question. The shop which was in possession of the plaintiff had

wooden door, whereas the shop in question was unauthorizedly occupied by the defendant and the same was having iron shutter gate. About 7 years ago the defendant without any right and consent of the plaintiff had illegally possessed the adjoining shop without any rhyme and reason.

[8] The statement of Yogender Tayal was in the context of authorization for filing the suit as per resolution Ex. P-1. Statement of Tejpal Tanwar DW-4 was specific in term of shop being a separate shop and was not a part of shop No. 18 as alleged by the defendant. The separate shop was forcibly occupied by the defendant and he was not authorized to retain the possession.

[9] The main thrust of the defendant/appellant was that as per report of Local Commissioner, the size of the shop was found to be 32' x 12' and keeping in view the size of the adjoining shop, case of the plaintiff was found to be false. The Local Commissioner was not supposed to collect the evidence in favour of either of the parties. Even as per the report of Local Commissioner, shop ABCD showed by dotted lines was found to be distinct shop other than the shop situated towards southern side of the shop ABCD. This made the report of Local Commissioner against the defendant itself to that extent. Even otherwise the Local Commissioner was not obligated to collect evidence for either of the parties nor the process of the Court could be utilized to collect evidence. Learned counsel further submitted that there was no evidence led by the plaintiff to show dimensions of the shop in question as per site plan Ex. P2. The

plaintiff has not discharged the onus of proving the identity of the property viz-a-viz the dimensions.

[10] Having heard learned counsel for the appellant, I find that the shop in question is claimed to have been dimensions of 13' x 10" x 8'. The adjoining shop was shop No. 18 which was leased out to the defendant. A perusal of site plan Ex. P2 revealed ABCD to be the portion shown by dotted lines and has the dimension of 12.7 x 7.10. This is the shop which was claimed to be a shop in question as per site plan Ex. P2 adduced by the plaintiff. The Local Commissioner himself showed this portion with dotted lines which is separate than the shop shown adjoining to it. The cross-examination of DW-4 Tej Pal Singh showed that in the site plan Ex D2, the disputed shop was shown by letters ABCD and the wall AB was of 7" in width. It showed that ABCD is a separate shop other than the shop which was existing towards Southern side of ABCD.

[11] Secondly, the shop which was let out to defendant was having projection over it, whereas it has shutters in the opening, whereas the shop which was let out to the defendant has wooden doors. These distinct features made the shop ABCD to be a distinct shop which was in individual existence and it was not part of shop No. 18 which was let out to the defendant. No rent note was proved on record nor any evidence was led by the defendant that he was paying rent regularly for the shop in question and has occupied the shop by way of any lawful transaction.

[12] The finding of fact recorded by the courts below cannot

be held to be perverse or the result of any misreading of evidence.
No law point worth consideration is involved in the present appeal.
The appeal is totally found to be bereft of merit and the same is accordingly dismissed.

06.09.2016

sumit

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No