

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

R.S.A. No. 4221 of 2014 (O&M)

Date of Decision: 12.01.2016

Shashi

.....Appellant

Versus

Susheel Kumar

.....Respondent

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. Amit Kumar Goyal, Advocate,
for the appellant.

SHEKHER DHAWAN, J

Present Regular Second Appeal against concurrent findings of both the Courts below whereby the suit for possession filed by plaintiff was decreed and appeal filed by defendant was also dismissed.

2. For the sake of convenience, the parties are being referred to as per their status before the Court of first instance. Relevant facts for the purpose of decision of present Regular Second Appeal that plaintiff had filed suit for possession on the ground that he is owner of shop in dispute, which is a portion of his house situated on Milton Road, Sonapat. Defendant is his neighbourer and they had very cordial relations. In the year 1999-2000, the plaintiff constructed three shops, including the shop in

question. Defendant helped him in constructing those shops. Defendant won over his confidence. The keys of the said shops were lying with the defendant in good faith as plaintiff was looking for some tenant. However, in September, 2000, the defendant requested the plaintiff that the services of her husband Rajender Kumar were terminated from Milton Cycle Industries, where he was working and she wanted to start the business of manufacturing candles, for which she had applied for a loan from the Bank. Plaintiff accepted the request and handed over the possession of the shop. Defendant also obtained an affidavit that suit property was rented out to her. However, after obtaining the affidavit, the defendant made some over writing on the same that plaintiff had received ₹1,00,000/- from her and that she would not be ejected till her life.

3. Defendant denied the fact that shop in question is the portion of the house of the plaintiff. However, defendant took the plea that the shop in question was rented on 14.09.2000, by the plaintiff till her life and at that time plaintiff had received a sum of ₹1,00,000/- (in lump sum) and an affidavit was executed by the plaintiff in favour of defendant, which was duly attested by notary public. Defendant is running a business of video game, selling toys and toffees for the children in the said shop. Later on, plaintiff threatened the defendant to trespass from the suit property and civil suit for permanent injunction was filed, which was decreed in her favour.

4. On these facts, the issues were framed and settled by the Court of first instance. Learned Court of first instance, after appreciating the evidence available on file, returned the findings that affidavit Ex.PW1/G (Ex.P1 in the case file titled as 'Shashi Vs. Susheel' decided on 27.11.2004)

was a forged document in view of statement of expert witness, who

appeared as PW-1 in the case. He had made report on the basis of his expert knowledge that certain lines were added subsequently. Court of first instance returned the findings that even if the document is taken into to be rent deed, the same required compulsory registration but that has not been done and the status of defendant is that of trespasser.

5. First appeal having been preferred by defendant was dismissed by the Court of first appeal on the ground that the said affidavit had been forged and it is not believable that anybody could let out the shop on payment of ₹1,00,000/- without any further terms and conditions.

6. Learned counsel for the appellant submitted that it had come in the statement of notary public, who had attested the document that there was no forgery of the document and there was no addition in document Ex.PW1/G. More so, the onus was upon the plaintiff to prove that the said document was forged one, which he has not been able to do so but the Courts below returned the findings, which were against the evidence available on file and as such the said findings be reversed and the present appeal be accepted.

7. On this point, reliance was placed upon judgment from Hon'ble Kerala High Court in case **Ahamad Vs. Gangadharan**, 1990 CivCC 791 and judgment from Hon'ble Madhya Pradesh High Court in case **Mohini Vs. Vidhyawati Rathore**, 2004(4) R.C.R. (Civil) 30.

8. Having considered the submissions made by learned counsel for the appellant and having gone the record of case file, this Court is of the considered view that both the Courts below have returned the findings on the basis of facts and evidence available on file that plaintiff is the owner of the shop. There is no valid rent agreement or any other document showing

possession of the defendant as a tenant. No title was tried by present appellant on the basis of affidavit Ex.PW1/G. More so, the said document has been held to be fabricated document on the basis of evidence of expert witness, which has been duly appreciated by both the Courts below and the concurrent findings have been recorded.

9. As regards to plea taken by learned counsel for appellant that initially onus relies upon plaintiff to prove that any document is forged one, there is no dispute on the legal point. However, in the present case the plaintiff has been able to discharge the onus lawfully placed upon that document is forged one and for that purpose plaintiff was led oral evidence and also examined the expert witness, who proved the document to be forged one.

10. The concurrent findings recorded by the Courts below on the basis of facts and evidence do not call for any interference. There is absolutely no substantial question of law involved in this case. Such a law was laid down by Hon'ble the Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwai (Dead) by LRs., 2001(2) JT 407.**

11. In view of the above, the present Regular Second Appeal is without any merit and same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

January 12, 2016

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