

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.4461 of 2014 (O&M)

Date of decision: 12.8.2016

Pritam Singh

... Appellant

versus

Ashok Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr. Amit Arora, Advocate,
for the appellant

...

AMOL RATTAN SINGH, J.

1. This is the second appeal of the 2nd defendant in a suit filed by present respondent No. 1 (plaintiff), by which the plaintiff sought a decree of perpetual injunction restraining the two defendants impleaded in the suit, from making any addition, alteration, construction, re-construction or repair in the suit premises, which were described in the plaint as a part of property bearing house No. 222/13, Gali No. 1, Tehsilpura, Amritsar. The plaintiff also sought that the defendants be restrained from changing the existing condition of the building in any manner.

2. The facts pleaded by the plaintiff, as have been taken from the judgments of the learned Courts below, were that defendant No. 1, Mohan Lal, is stated to have taken two rooms on rent, one on the ground floor and the other on the first floor of the aforesaid property, from Lal Chand, father of the plaintiff.

The tenancy is stated to have been “orally accompanying by delivery of possession” and the terms of the tenancy are stated to have been incorporated in a rent note, executed by defendant No. 1 Mohan Lal on 21.11.1977, in favour of Lal Chand. Lal Chand having died, the plaintiff, Ashok Kumar, was stated to have stepped into his shoes as the landlord of the property.

3. Defendant No. 1 is stated to have delivered possession of the tenanted premises to defendant No. 2, Pritam Singh (the present appellant), who was thereafter in exclusive possession as a sub-tenant of defendant No. 1. The subletting of the demised premises was stated to have been without the written consent of the landlord. However, Pritam Singh is stated to have changed the user of the tenancy premises, without the written consent of the landlord or of the Rent Controller, by starting business activities in the room situated on the ground floor of the building.

Yet further, it was averred that the demised premises, being more than 100 years old, had developed cracks in the walls, the flooring had broken, the roofs were in a damaged condition and the roof of one room under the tenancy of defendant No. 1 had, in fact, fallen down. Actually, the building itself had become unfit for human habitation with the mortar used having also lost its adhesive power.

Thus, it was contended that the entire building was required to be pulled down and reconstructed right from its foundation.

It was also stated that an ejectment petition had been filed by the plaintiff before the Rent Controller, which was still pending but in the meanwhile, the defendants having threatened to “effect additions, alterations and repairs to the premises”, for which they had no right, the suit was filed

upon the defendants not 'budging' from their stand.

4. Upon notice issued, defendant No. 1 did not appear to contest the suit and was proceeded against *ex parte*, whereas defendant No. 2 (the present appellant) appeared and filed a written statement denying the averments made in the plaint, including the fact that defendant No. 1, Mohan Lal, had taken two rooms of the building on rent from the father of the plaintiff, having executed a rent note on 21.11.1977. It was also denied that Mohan Lal had sublet the rooms to defendant No. 2 for consideration. The building being unfit and unsafe was also denied and even the factum of the plaintiff being the owner/ landlord thereof, was denied.

It was contended that the property bearing No. 222/13 was evacuee property and that Harnam Singh, father of the present appellant (defendant No. 2) was in possession of three rooms situated on the first floor and one big room situated on the ground floor, as also one '*Verandah*' and a '*Vehra*' (courtyard), as described in the site plan annexed with the written statement, since 01.05.1948.

The name of the other occupants of the property in the year 1948 were also given, including that of one Inderjit Kaur.

5. It was further contended that previously, on the ground floor, there were six rooms with two entrances to the property, one from Gali No. 1 and the other from Gali No. 2 and there were also two stair cases from each of the two Galis. However, only the stair case going up from Gali No. 1 still existed, with the other having fallen down. One room having fallen down was also admitted.

Yet further, it was stated in the written statement of the present appellant that one Ram Saran Dass (father of defendant No. 1 Mohan Lal) was

earlier in possession of one room which had fallen down and one room on the ground floor had been demolished.

Still further, it was stated that Harnam Singhs' children (the appellant and his siblings), were also born in the said building and that Harnam Singh was still living with the present appellant, a widow daughter and other family members in the building since 01.05.1948 and as such, he and his family members' possession, being adverse, open and hostile for more than 12 years, had matured into ownership.

The possession of the plaintiff or his father Lal Chand on any part of the property since 1977 was also denied and it was stated that consequently, the question of creating a tenancy in favour of Mohan Lal did not arise.

Further, it was contended that the rooms in possession of the present appellant and his father Harnam Singh and other family members were separate from and never in possession of either defendant No. 1 Mohan Lal, or his father Ram Saran Dass.

The contention with regard to the building having become unsafe were further denied, on the ground that in fact, the plaintiff himself was residing in three rooms of the building, besides other occupants. It was averred that some minor repairs were required in the rooms in possession of Ram Saran Dass and the appellant, and that they had every right to have such repairs effected.

Consequently, the appellant-defendant prayed for dismissal of the suit.

6. The respondent-plaintiff filed a replication to the aforesaid written statement and while denying the contents thereof, stated that the property was originally numbered 202/13 but it was admitted that it was

originally evacuee property with the Department of Rehabilitation. It had been purchased from the department by the aforesaid Smt. Inder Kaur who was residing in it with her husband and a sale certificate in her favour was issued on 30.10.1962, which was ultimately registered on 28.01.1963.

The plaintiff further contended in his replication that Harnam Singh, father of the appellant-defendant No.2, was a tenant under the Rehabilitation Department in two rooms only, situated on the first floor, and had been paying rent for the said rooms to the department. Thereafter, the said Harnam Singh became a tenant of Smt. Inder Kaur upon her stepping into the shoes of the department and that Ram Saran Dass (father of defendant No. 1) also was a tenant on the ground floor, as also on another room on the first floor of the property. It was contended that Harnam Singh and Ram Saran Dass thereafter “used to make a payment of loan” with respect to the tenanted premises to Smt. Inder Kaur, because they were both tenants @ Rs. 10/- per month (each) and that Smt. Inder Kaur had mortgaged the property to Lal Chand, father of the plaintiff, vide the three mortgage deeds. The first one, dated 16.01.1964, was registered on 17.01.1964 for a sum of Rs.500/-, another mortgage deed for a sum of Rs.750/- was dated 18.03.1964 and registered on 19.03.1964. The last deed, for a sum of Rs.1,100/-, was executed on 07.12.1964 and registered on 09.12.1964.

7. Thereafter, Lal Chand had let out two rooms on the ground floor of the property to one Kulbir Singh son of Mohan Singh, vide a rent note dated 13.07.1966, with the rent being Rs. 15/- per month. Lal Chand also inducted Hazara Singh, son of Bhag Singh at a rent of Rs. 20/- per month in two rooms on the ground floor.

Lal Chand subsequently filed an petition for the ejectment of Hazara Singh, which was allowed on 22.06.1987 and after execution of the decree, possession of the said two rooms were delivered to Lal Chand.

One Satyawati was also stated to be a tenant of Lal Chand in two rooms on the ground floor, at a rental of Rs. 10/- per month.

8. Litigation with Ram Saran Dass and Mohan Lal, by Lal Chand, was also referred to, with the matter ultimately stated to have been compromised.

It was contended by the plaintiff in his replication that it was thereafter that the rent note dated 21.11.-1977 was executed by Lal Chand (father of the plaintiff) in favour of Mohan Lal (defendant No. 1), thus admitting Lal Chand to be the landlord of the premises.

It was also contended that the property was mutated in the name of Lal Chand by the House Tax Department of the Municipal Corporation, Amritsar, with Lal Chand making payment to the corporation from time to time. In fact Lal Chand was issued a notice for recovery of house tax with regard to the property.

Yet further, it was stated in the replication, that the present appellants' father, Harnam Singh, had been in possession of only two rooms since 1948, as a tenant on the ground floor @ Rs. 10/- per month, whereas the remaining two rooms, one on the ground floor and the other on the first floor was under the tenancy of Mohan Lal, who delivered possession of the same to appellant-defendant No. 2.

9. Thus, denying the contents of the written statement, the plaintiff prayed for decreeing of the suit.

10. A rejoinder to the replication is also stated to have been filed by

the appellant, obviously denying the contents of the replication, after which initially only one issue was framed but at different stages thereafter, upon applications etc. having been filed for framing additional issues, eventually the following issues were framed:-

- “1. Whether the plaintiff is entitled to the injunction prayed for? OPP
2. Relief
- 2 (A) Whether the defendant No. 2 has right to make repairs of the premises in his possession if so to what extent?”

The plaintiff examined 15 witnesses whereas the present appellant-defendant No. 2 examined six witnesses.

A large number of documents were also led by way of evidence by both sides, the relevant ones of which, as have been referred to in the judgments of the Courts below, shall be referred to.

11. Upon appraising the evidence and considering the pleadings and arguments addressed, the learned Additional Civil Judge (Senior Division), Amritsar, eventually came to the conclusion that the appellant, through his counsel, had produced copies of rent receipts (which were not exhibited as exhibits but as Marks A1 to A6 and AZ), showing defendant No. 1, Mohan Lal, in possession of the suit property as a tenant of Lal Chand, father of the plaintiff.

Exhibits P1 to P3, i.e. the mortgage deed executed by Inder Kaur in favour of Lal Chand, were also held to be proved by that Court. It was held that the said mortgage deeds created a usufructuary right in the property, in favour of Lal Chand and thereafter, in favour of the plaintiff, who stepped into his shoes after his death.

In effect, it was held that the plaintiff and his father having a

primary right to the property, by virtue of the said mortgage deeds, and the appellant himself having produced the rent receipts showing Mohal Lal defendant No. 1 to be a tenant of the plaintiffs' father, he could not have handed over the suit property without the consent of the plaintiff or his father Lal Chand (name of Lal Chand wrongly written as Mohan Lal by the Additional Civil Judge at three to four places in the last part of the judgment).

It was further held that the condition of the property stood established on record to be not safe for human habitation and therefore, the appellant only being in possession thereof, the property was not entitled to carry on any repairs/additions/alterations etc. to it.

On the above findings, the suit of respondent No. 1-plaintiff was dismissed by the Additional Civil Judge.

12. The learned First Appellate Court, after noticing the factual position given in the pleadings and the issues framed, also came to the conclusion that the building was earlier owned by the Department of Rehabilitation, it being an evacuee property (having been left behind by migrants who went to Pakistan upon partition of the country). That Court also found to be correct the fact that a sale certificate had been issued on 30.10.1962 to Smt. Inder Kaur, wife of Makhan Singh, which was registered on 28.01.1963, with the sale certificate (Ex. P-45) having been proved by PW8, Pritpal Singh, a clerk in the Rehabilitation Department.

The property having been mortgaged to the father of the plaintiff, vide the mortgage deeds referred to earlier was also a finding recorded by the First Appellate Court, which held that the deeds being more than 30 years old, were admissible as such, as evidence under Section 90 of the Indian Evidence

Act, 1872. Other than that, PW-9 Bachan Singh also identified the signatures

of his father the late Sadhu Singh, who was an attesting witness to the said mortgage deeds, Ex. P1 to P3. One Ramesh Pal Sharma PW-10 also proved the mortgage deeds as per the record of the office of the Sub-Registrar, Amritsar.

It was found that the mortgage in favour of Lal Chand was never redeemed by Inder Kaur and as such, after Lal Chands' death, plaintiff Ashok Kumar stepped into his shoes.

That Court also recorded a finding that Harnam Singh, father of the appellant, was a tenant of the Department of Rehabilitation, though he had denied the fact and claimed to have come into possession in his own right as an owner. However, such ownership could not be established by him.

13. Importantly, the lower appellant Court also found that in his written statement, the present appellant-defendant No. 2 admitted the property to be an evacuee property but had nowhere claimed his adverse possession to the knowledge of either the Department of Rehabilitation, or thereafter qua Inder Kaur and as such, could not establish his claim as an owner, being in adverse possession "hostile to their title".

The appellant himself had produced documents along with a written statement on 04.01.1966, including a report dated 12.02.1964, showing his father, Harnam Singh, to be recorded as a tenant since 01.05.1948. Subsequently though he denied having filed those documents, however, that denial was rejected by the Court, in view of the fact that though those documents were never exhibited, but were taken as marked documents, they could still be read in evidence having been produced by the defendant himself.

Consequently, it was held that a tenant always remaining a tenant,

whether he pays any rent to the landlord or not, Harnam Singh, father of the

appellant-defendant No. 2, was proved to be a tenant first of the Department of Rehabilitation and then of Inder Kaur. It was also noticed that the appellant had, in fact, stated that the receipts were in respect of use and occupation of the house and not by way of a tenancy.

14. As regards the claim of the appellant that his father, Harnam Singh, was occupying three rooms on the first floor and one room on the ground floor, the first piece of evidence led by the appellant in that regard was an application, Ex. D-4, to the electricity board, for obtaining an electricity connection (by Harnam Singh). The property was stated to have been described in the application and though the application itself was proved by DW-2 Vijay Gupta, a clerk in the Board, however, in cross-examination the said witness stated that D4 was not prepared, filled up or submitted in his presence and he could not identify the signatures or writing of any person thereon.

Consequently, with the applicant himself, i.e. Harnam Singh having held died, the application itself was held to be not proved by the First Appellate Court.

15. Other than the above, it was found that the appellant in his written statement, had claimed that the entire first floor and one room on the ground floor was in possession of Harnam Singh, as per a site plan Ex. DA, which showed that there were three rooms besides an open '*Vehra*' (courtyard) and another open place and bathroom on the first floor.

A room on the ground floor was also claimed to be in possession of Harnam Singh. That Court also found that on the ground floor there were four other rooms of which three were stated to be occupied by the plaintiff and one by another Smt. Satya.

Thus, it was found that though it had been stated that in the year 1948 there were five occupants in the building, i.e. Inderjit Kaur, Nihal Chand, Ram Saran Dass, Smt. Bharti and Ram Narayan, it was not possible for everybody including Harnam Singh to have been accommodated in the building. Detailed reasoning for that finding of fact is given by the learned lower Appellate Court, in paragraph 16 of its judgment.

16. On the basis of the aforesaid findings, it was held that Harnam Singh being an occupant of four rooms was not proved whereas on the other hand, it was proved that he was a tenant in two rooms in the year 1948 and the appellant, i.e. Harnam Singhs' son, also possessed two rooms, as a tenant of Lal Chand, as per the rent note dated 21.11.1977.

Having come to the aforesaid conclusion, it was thereafter held by the learned lower appellate Court that though it was for the Rent Controller to determine whether the building was safe or unsafe for human habitation, yet even to decide the issue with regard to whether the defendants had any right to repair the building, it was necessary to go into that issue.

17. Finding that even the appellant-defendant in his written statement had admitted that one stair case and one room had fallen and further that another room on the ground floor had been demolished, it was established that the building was in a dilapidated condition with even the walls in some parts having bulged out. (The condition of the building as per the report of the Local Commissioner appointed, has also been described in detail in paragraph 17 of the judgment of the learned Additional District Judge).

18. Having held as above on the condition of the building, it was held that the remedy available to the defendant was actually to apply to the Rent

Controller under Section 12 of the East Punjab Urban Rent Restrict Act, 1949.

Eventually relying upon a judgment of this Court in **Som Dutt and others** vs. **Vidhyah Parkash** (2003) (1) Rent Control Reporter 503, it was held that a tenant cannot have a better right than the land landlord to repair a building and a right accrues to the landlord to eject the tenant in case the building was unsafe.

Other than that, it was finally held that the appellant who had been held to be not the owner of even the part of the building in his possession, in any case he could not have a better right than the primary tenant, i.e. defendant No. 1, Mohan Lal, who was a tenant under the late father of the plaintiff.

19. On the aforesaid reasoning, the first appeal filed by the present appellant was dismissed by the lower Appellate Court, thereby affirming the decree of the learned Additional Civil Judge, decreeing that the defendants had no right to effect repairs or make additions, alterations, construction/reconstruction in the suit property and that the plaintiff had a right to restrain them from doing so.

20. Before this Court, learned counsel for the appellant firstly submits that the suit property was never proved to be tenanted, with the appellant being a tenant therein. In fact, his specific contention was that he was in adverse possession, open and hostile to the true owner, i.e. Inder Kaur, who was allotted the said property by the Rehabilitation Department by a sale certificate dated 30.10.1962.

He further submits that the father of plaintiff-respondent No.1 was found to be a mortgagee of the said Inder Kaur, who had executed three registered mortgage deeds in his favour on 17.1.1964, 19.3.1964 and

9.12.1964.

Learned counsel still further submits that father of the plaintiff-respondent No.1 having been a mortgagee, in any case the appellants' possession was to be seen not against the respondent-plaintiff or his father but against Inder Kaur.

21. Having considered the aforesaid argument, it is, however, seen that the specific finding of the learned Courts below is that the appellant himself had sought to lead by way of evidence, documents showing that he had paid charges for the use and occupation of the premises, to the Department of Rehabilitation. That being so, it was obvious that he came into permissive possession of the suit property, even though it may have been by permission of the Department of Rehabilitation.

Thereafter, as to when and how such possession became adverse to either the owner or the mortgagee, to whom the property was mortgaged by way of a usufructuary mortgage, was not proved by the appellant.

22. As a matter of fact, to claim title by way of adverse possession, the appellant has to specifically show adverse possession which is open and hostile to the owner of the property. The appellants' father/the appellant, admittedly having paid the charges for use and occupation of the property, they therefore, came into permissive possession of the property. Further and more importantly, there being no limitation for redemption of a mortgage by the mortgagor, as per the law now wholly settled by the judgment in **Singh Ram v. Sheoram** (2014) 9 SCC 185, the true owner of the property, subject to any lawful caveats that the mortgagee may raise to such redemption, remains the mortgagor. Thus, in the present case, Inder Kaur never having been impleaded as a party to the *lis*, the appellant in any case could not have pleaded and claimed title to the property, on the basis of any possession adverse to the true

owner thereof.

It may further be stated here that the suit filed by the plaintiff was one only seeking mandatory injunction, restraining the appellant-defendant from changing the nature of the property. Hence, the appellant not having been able to prove that he had become owner of the property by way of adverse possession, open and hostile to the true owner, with occupation charges admittedly having been paid by him to the initial owner of the property, i.e. the Department of Rehabilitation, I find no error in the judgments of learned Courts below in holding that he thereafter continued to occupy the suit property as a tenant, with Inder Kaur remaining to be the owner of the property and the respondent-plaintiff, after his father, being the mortgagee of Inder Kaur.

Hence, in the opinion of this Court, even the factual issue of occupancy of any specific rooms by the appellant-defendant No.2, in the suit property, need not be gone into, as to whether he occupied them as the tenant of the owner Inder Kaur, or as a sub-tenant of defendant No.1, Mohan Lal. Either situation would make no difference as regards the plea of adverse possession taken by the appellant, with the true owner of the property, i.e. Inder Kaur, not being a party to the present *lis* at any stage. Consequently, there was no question of the Courts below issuing a decree declaring the respondent to be the owner of the property, on the plea of adverse possession taken by him.

23. Therefore, there is no ground for this Court to interfere in the judgments and decrees of the Courts below, restraining the appellant from making any changes to the suit property.

Hence, finding no merit in this appeal, it is dismissed *in limine*,

with no order as to costs.

12.8.2016
pk/nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No