IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.4844 of 2015
Date of Decision: 22.11.2017

Lakhbir singh Uppal
......Petitioner

Vs

Gurjit Singh Uppal
....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Sanjay Jain, Advocate
for the petitioner.

Mr. J.S. Cooner, Advocate
for the respondent.

****

RAJ MOHAN SINGH, J.

[1]. This revision petition has been directed against the order dated 17.07.2015 passed by the Additional District Judge, Ambala vide which application under Order 41 Rule 27 read with Section 151 CPC was allowed at the appellate stage.

[2]. Brief facts are that the petitioner/plaintiff filed a suit for vacant possession of portion of shop consisting of one shed on the ground floor marked by letters 'JKLMN' at the back of the shop of the plaintiff as shown in red colour in the site plan attached with the plaint and portion of first floor consisting of

Mohmed Atik
2017.11.27 15:06
I attest to the accuracy and
authenticity of this document

one room marked with letters 'ABCDEF' L-shaped and a shed in front of this portion marked with letter 'X' as shown in red colour in the site plan. The property bears Shop No.54, Haryana Motor Market, Ambala City having H.T. No.1440, Ward No.12, Ambala City. Recovery to the tune of Rs.81,000/- as arrears of licence fee w.e.f. 01.01.2006 to 21.06.2007 at the monthly licence fee fixed at Rs.4500/- with future mesne profits @ Rs.9000/-per month w.e.f. 01.07.2007 till delivery of the vacant possession was also sought.

[3]. Plaintiff claimed himself to be owner in possession of the shop by virtue of gift deed dated 20.09.2005. The ownership of the shop was mutated in the name of the plaintiff in the municipal record. Defendant is real brother of the plaintiff and he was given possession of the shop on oral licence at a monthly licence fee of Rs.4500/- per month as settled between the parties. Defendant paid the licence fee w.e.f. 01.10.2005 to 31.12.2005 at the monthly licence fee of Rs.4500/- and thereafter defaulted in making the payment of licence fee of the portion of the shop in dispute. Defendant also damaged the roof and plaster of the shop in the process of manufacturing battery plates on large scale. Defendant also damaged the premises by melting the lead which was used in the process of manufacturing plates of the batteries. Besides other grounds,

Mohmed Atik
2017.11.27 15:06
I attest to the accuracy and
authenticity of this document

the plaintiff alleged that the defendant had installed a heavy capacity generator and has no control on environmental pollution by acids and fumes emitting from such manufacturing process. Violation of oral licence was alleged by the plaintiff. Plaintiff further claimed that the licence was revoked and terminated orally as well as through notice under Section 106 of the Transfer of Property Act and thereafter suit was filed.

[4]. The suit was contested by the defendant. Ownership of the plaintiff was denied. The execution of gift deed was claimed to be on account of misrepresentation, fraud and coercion. Father of the parties has challenged the said gift deed and the suit is still pending. The transfer of property in the name of the plaintiff in the municipal record is of no consequence as such record does not prove the ownership. Defendant being real brother of the plaintiff is also a co-sharer in the property.

[5]. The trial Court on the basis of material on record decreed the suit vide judgment and decree dated 09.05.2014, thereby making the plaintiff entitled to the recovery of Rs.81,000/- as arrears of licence fee from 01.01.2006 to 21.06.2007 and Rs.9000/- per month as *mesne* profits from 01.07.2007 till vacant possession of the suit property No.1440 is delivered to the plaintiff.

Mohmed Atik
2017.11.27 15:06
I attest to the accuracy and
authenticity of this document

[6]. Feeling aggrieved against the aforesaid judgment and decree, defendant filed an appeal, in which application under Order 41 Rule 27 CPC was also filed for permission to lead additional evidence by way of tendering copies of house tax register in respect properties No.1440, 1441 and 1442, Ward No.12. Defendant claimed that the property was revolving around the properties No.1440, 1441 and 1442. Whether all the properties were subject matter of gift deed dated 20.09.2005 or the said properties were shown separately towards house tax by the Municipal Corporation? By the dint of gift deed dated 20.09.2005, father of the parties namely Ranjit Singh transferred shop No.1440 in favour of the plaintiff. Shop No. 1441 and 1442 were not the subject matter of gift deed, rather these were different properties. The area of the aforesaid properties viz-a-viz. the total area shown in the municipal record in different documents is the controversy which is sought to be established on record by means of additional evidence at the appellate stage.

[7]. Learned counsel for the respondent submitted that in fact properties No.1441 and 1442 together with the property No.1440 constitute total area of 200 sq. yards and under the garb of wrong entries in the municipal record, the claim of the respondent with regard to properties No.1441 and 1442 was

Mohmed Atik
2017.11.27 15:06
I attest to the accuracy and
authenticity of this document

sought to be nullified by the petitioner.

[8]. Learned counsel further submitted that the properties No.1441 and 1442 are recorded in the name of Guneet Uppal as per property tax for the year the year 2016-17 maintained by the Municipal Corporation, Ambala, Haryana. Reference was made to information received under the Right to Information Act, supplied to Gurjit Singh Uppal son of Ranjit Singh Uppal vide serial No.SPL01 dated 14.09.2017 in respect of properties No.1440, 1441 and 1442 showing the area of all these plots to be 200 sq. yards and the area under properties No.1441 and 1442 were shown to be of commercial in nature. Learned counsel also placed reliance upon the photographs showing situation of all the properties adjoining to each other. In the gift deed area of the property i.e property No.1441 was shown to be 200 sq. yards.

[9]. Vide order dated 13.07.2017, in order to resolve the controversy in an appropriate manner, this Court summoned the record of properties No.1440, 1441 and 1442 from the Municipal Corporation, Ambala.

[10]. In compliance of the said order, a photostat copy of the Tax Demand and Collection Register for the year 2007-08 was produced in which area of property No.1440 was shown to be

Mohmed Atik
2017.11.27 15:06
I attest to the accuracy and
authenticity of this document

200 sq. yards and was shown to be commercial in nature. Thereafter house tax assessment in respect aforesaid three properties and other related documents were also sought to be produced.

[11]. After hearing learned counsel for the parties and taking assistance from the Executive Officer, Municipal Corporation, Ambala City, it can be noticed that in the Tax Demand and Collection Register, the property No.1440 (commercial) was shown to be registered in the name of Ranjit Singh and the area was shown to be 200 sq. yards. The house tax of the property was assessed. Properties No.1441 and 1442 were shown to be residential/non-commercial. The properties were not shown to be registered in the name of any person in the municipal record and the individual area of these plots were shown to be 200 sq. yards each. Other particulars of the properties were shown blank. In the Tax Demand and Collection Register for the year 2005-06, name of Lakhbir Singh Uppal came to be registered in place of Ranjit Singh Uppal. Other configurations of the property remained the same in respect of all the three plots. Further in the aforesaid Register for the year 2007-08, Lakhbir Singh Uppal was shown to be owner of plot No.1440 (commercial) and the area of 200 sq. yards each of plot Nos.1441 and 1442 were shown to be vacant without the name of occupant. Similar

Mohmed Atik
2017.11.27 15:06
I attest to the accuracy and
authenticity of this document

entries were recorded in the said Register for the year 2008-09.

[12]. In the record of House Tax Register from 1978-79 and 1980-83, the property was shown to be bearing No.81/54 (shop) in the Haryana Motor Market which was recorded in the name of Ranjit Singh and was in his possession. In the Register of Permanent Property ID and Tax Assessment Information, the property No.1440 was recorded in the name of Lakhbir Singh Uppal and the area was shown to be 200 sq. yards (commercial) for the Assessment year of 2010-11 and 2013-14. In the notice for property tax for the year 2015-16, the name of the occupant was Lakhbir Singh and property No.1440 was shown to be 200 sq. yards in area. Similar entries were made in respect of property tax for the year 2016-17.

[13]. Looking to the conflicting records maintained by the Municipal Corporation, Ambala, claim viz-a-viz. area of all the three plots has to be gone into by the Appellate Court on the basis of additional evidence to be produced before it. The old number of the property was 81/54 which was recorded in the name of Ranjit Singh and property was assessed to house tax. It appears from the record that both the parties have serious issue with regard to the area of the property No.1440 on the spot.

Mohmed Atik
2017.11.27 15:06
I attest to the accuracy and
authenticity of this document

[14]. It cannot be ignored from the perusal of the record shown by the Executive Officer, Municipal Corporation, Ambala that properties No.1441 and 1442 are not in existence. Apparently, properties No.1441 and 1442 are in possession of the defendant and his family. Whether area of all the three shops would be 200 sq. yards or the same is only for shop No.1440 to the exclusion of properties No.1441 and 1442 would be an issue which needs to be assessed by the lower Appellate Court with reference to material to be placed before it. The additional evidence would definitely enable the lower Appellate Court to decide the *lis* in an effective manner. The indulgence shown by the lower Appellate Court while allowing the application for additional evidence at appellate stage cannot be faulted with in view of nature of controversy involved in the present case.

[15]. In view of aforesaid, this revision petition is found to be totally bereft of merits and the same is accordingly dismissed.

November 22, 2017 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No

Mohmed Atik
2017.11.27 15:06
I attest to the accuracy and
authenticity of this document