

RSA No. 425 of 1988(O&M)

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

**RSA No. 425 of 1988(O&M)
Date of Decision: 18.7.2017**

Shiv Singh (deceased) Through legal representatives

.....Appellants

Vs.

Gian Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Naveen Batra, Advocate
for the appellant.

None for the respondents.

RAMESHWAR SINGH MALIK J. (ORAL)

Defendant No.1, is in regular second appeal against the impugned judgment of reversal dated 22.12.1987 passed by the learned first appellate court, whereby first appeal of the plaintiff was allowed and suit for permanent injunction was decreed.

Brief facts of the case, as recorded by the learned trial court in para No.1 and 2 of the impugned judgment, are that Gian Singh son of Basant Singh resident of Adda Market Nangal Township, sought an order of injunction for restraining Shiv Singh-defendant No.1, from interfering in the alleged peaceful possession of the plaintiff in the land measuring 5 marlas (Gair Mumkin abadi shop), situated in village Humbewal, fully described in the heading of the plaint. The allegation was that the land in dispute along with shop was taken on rent by the plaintiff from Amar Singh-

RSA No. 425 of 1988(O&M)

defendant No.2 at the rate of ₹10/- per month and he had been paying the rent regularly to Amar Singh-share holder and the plaintiff enjoyed peaceful possession without any interruption. The shop of the plaintiff was also allegedly confirmed by demarcation report dated 16.3.1981 and revenue record to the contrary was stated to be false and the result of collusion between Shiv Singh-defendant No.1 and the revenue officials. It was stated that signature of the plaintiff had been obtained on a blank paper by defendant No.1, in connivance with some residents of Nangal Township and police officials and some forged documents might have been prepared thereon by the said defendant. Defendant No.1 having started threatening to dispossess the plaintiff forcibly from the shop in dispute, the suit was filed in court on 31.10.1981.

Along with the plaint of the suit an application under order 39 Rule 1 and 2 read with Section 151 Cr.P.C. was also filed by the plaintiff for the grant of ad interim injunction against the defendant No.1, during the pendency of the suit. When that application came up before Shri G.S. Bhatti, the then learned Sub Judge 1st Class, Anandpur Sahib, on 31.10.1981, he issued ex-parte injunction order against Shiv Singh-defendant No.1, while giving notice to him for 16.11.1981. That order was modified by Sh. Bhatti, on 8.9.1982 when he directed the parties to maintain status quo as regards possession till the disposal of the suit.

Defendants were put to notice. Defendant No.1-appellant namely Shiv Singh appeared and filed his contesting written statement. Plaintiff filed his replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is a tenant of the defendant No.2?

RSA No. 425 of 1988(O&M)

OPP

2. Relief

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has failed to prove his case. Accordingly, suit was dismissed by the learned trial court, vide judgment and decree dated 30.10.1983. Feeling aggrieved, plaintiff filed his first appeal, which came to be allowed by the learned Additional District Judge, vide impugned judgment and decree dated 22.12.1987. Hence this regular second appeal at the hands of unsuccessful defendant.

Appeal was admitted by this Court vide order dated 5.5.1988. Thereafter, vide order dated 3.8.1993, respondent was restrained from making any construction on the property in dispute. That is how, this Court is seized of the matter.

Nobody has come present on behalf of the respondent.

Heard learned counsel for the appellant.

Before proceeding further, it is pertinent to note here that during the pendency of the appeal, appellant since died, his legal representatives were brought on record. It was a suit for permanent injunction. Plaintiff was not claiming ownership. So far as his possession over the suit land was concerned, it has been established by way of documentary as well as oral evidence. Chaman Lal-DW3 who was produced by the appellant himself, proved the document Ex.D3 against the appellant and in favour of the respondent-plaintiff to the extent that possession of the plaintiff was even

RSA No. 425 of 1988(O&M)

admitted by the present appellant. Similarly, another witness produced by defendant No.1-appellant was Amar Singh-DW1, who was defendant No.2. Amar Singh also deposed against the appellant and proved possession of the plaintiff on the suit land. Similarly, Nasib Singh Girdawar, who was appointed Local Commissioner by the learned court, submitted his report as Ex.P-1, so as to prove cultivating possession of the plaintiff on the suit land.

It is also pertinent to note here that the relevant revenue record in the form Ex.P2, P4 and P5 proved that Amar Singh was the co-sharer of the suit land. Having said that, this Court feels no hesitation to conclude that the learned Additional District Judge was well within his jurisdiction to reverse the judgment passed by the learned trial court. Consequently, suit of the plaintiff was decreed only to the extent that he would not be dispossessed except in due course. In this view of the matter, no fault can be found with such cogent findings recorded by the learned Additional District Judge, thus, the impugned judgment and decree deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate court in para 15 and 16 of its impugned judgment, which deserve to be noticed here, read as under:-

*“After hearing the learned counsel for the parties,
I am of the opinion that the appellant has successfully
proved that he was in possession of the suit property.
There are two writings of the same date dated*

17.10.1981. Both the writings are witnesses by Chaman Lal DW3. He had clearly admitted while making the statement that it was the appellant who was in possession of the suit property. He is the witness of the document upon which reliance is placed upon by the respondent and that document is Ex.D3. The learned counsel for the respondent has contended that he is not bound by the statement of the witness. That be so, but the writing itself Ex.D3 depicts that it was the appellant who was in possession of the suit property on 17.10.1981. He had agreed to vacate it by 30.10.1981 which he did not. It had been so admitted by Chaman Lal that at the time of filing of the suit the appellant was in possession of the suit property. Amar Singh DW1 from whom the appellant has taken the property on rent has also supported the case of the appellant. He was again a witness of the respondent and has supported the case of the appellant.

It cannot be argued by the respondent that this witness was siding with the appellant, because it was for him to choose whether to produce him in evidence or not. The order Ex.D2 vide which the appeal of Amar Singh for the correction of khasra girdawari was dismissed is also not relevant because it pertains to some other land. From the revenue record EX.P2, P4 and P5, it is proved that Amar Singh was the co-sharer in the suit land and it is not disputed that a co-sharer has got the authority to

rent out the join property. Ex.P1 is the report made by Nasib Singh, Girdawar, who was appointed as Local Commissioner. It has mentioned the possession of the appellant on the suit property. The trial court has dismissed the suit only on the ground that he appellant had failed to prove his tenancy under Amar Singh, as no receipt was produced by him, which might have been issued by Amar Singh. When Amar Singh appeared in the witness box as witness of the respondent and stated that he had rented out the disputed premises to the appellant. if Amar Singh could support the case of the appellant, he could issue him the receipts as well. From the evidence on record, it is otherwise proved that he appellant was in possession of the suit property at the time of filing of the suit. Even if Amar Singh had no authority to rent out on the ground that he had sold away his entire share as alleged by the respondent, though not substantiated from the evidence, he could not be thrown out without due process of law. The findings of the trial court on issue No.1 are reversed holding that the appellant was in possession of the suit property.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the abovesaid findings recorded by the learned Additional District Judge. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this

RSA No. 425 of 1988(O&M)

Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

18.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No