

ESA No. 205 of 2016 (O&M)
DECIDED ON: MARCH 14, 2017

.....APPELLANT

VIJAY KUMAR AND ANOTHER

....RESPONDENTS

Present: Mr. Sanjeev Kumar Bawa, Advocate
for the appellant.

JASPAL SINGH, J

Challenge in the instant appeal is to the order dated November 14, 2014 passed by learned Civil Judge (Jr. Division), Jalandhar whereby, third party objection filed on behalf of appellant was dismissed as well as to the order dated April 29, 2016 passed by learned District Judge, Jalandhar whereby, an appeal preferred against the order dated November 14, 2014 was also dismissed.

2. Shortly put, the brief facts of the instant case are that respondent No.1 preferred eviction petition against respondent No.2, which was allowed by Rent Controller, Jalandhar vide judgment/order dated April 28, 2011. To seek possession in compliance of the above-said order, decree holder/land lord filed an execution application. During the pendency of execution application, appellant filed objections *inter-alia* on the ground that the property bearing No.

ES-54-A, Dhobi Mohalla, Jalandhar was originally under the possession of Munshi Ram and after the demise of Munshi Ram it was inherited by Vijay Kumar and Vikram. The ownership claimed by the appellant is on the ground that a family settlement took place in between the parties and the appellant started receiving rent in respect of five shops whereas, two shops remained in possession of their uncle. Respondent No.1-Vijay Kumar alongwith Vikram filed a suit for partition in respect of the property in dispute, which was dismissed by learned trial Court by holding that the suit property was already partitioned. The appellant has admitted in the above-said suit that he is receiving the rent. He also admitted the fact that earlier Dharam pal was in possession of the suit property and after the death of Dharam Pal his wife Asha Rani came into possession of the suit property. Thereafter, respondent No.2-Satwant Singh came into possession. Since, Satwant Singh left abroad and while going abroad he handed over the possession of the property to the appellant.

3. It has been submitted by the learned counsel for the appellant that without considering the pleas raised in the their party objection and without affording an opportunity to lead evidence to prove the assertion and grounds made therein, the learned executing court dismissed the objections of the appellant vide order dated November 14, 2014. Aggrieved, against the above-said order, appellant preferred an appeal, which was also dismissed vide order dated April 29, 2016. The impugned orders passed by learned courts below are liable to be set aside being passed in gross violation of settled proposition of law. Both the courts below have failed to appreciate the provisions contained under Order XXI Rule 101 of the Code of Civil Procedure (for short 'code').

Order XXI Rule 101 of the Code makes it mandatory for the Court to determine all kind of questions which includes the questions relating to right, title or interest in the property and Court has jurisdiction to decide the same but in the instant case the courts below have not adhered to afore-said provisions while passing the impugned orders. He has further argued that respondent No.1 has failed to establish his exclusive possession and ownership over the suit property whereas, on the other hand appellant has sufficient evidence that he is having possession over the suit property and in this regard, he has placed reliance upon copy of rent agreement executed between him as well as his tenant Dharm Pal Chadha, copies of notices, receipts of property tax, copy of partnership deed executed between Dharam Pal Chadha and respondent No.2-Satwant Singh etc. A perusal of above-said documents clearly shows that respondent No.2-Satwant Singh never remained a tenant under respondent No.1.

4. Learned counsel for the appellant next argued that the impugned orders have been passed in gross violation of Section 141 of the Code which mandate that every miscellaneous proceedings should be adjudicated after framing issue but the same has not been done in the present case. Thus, taking the impugned orders from either of angles, the same are not sustainable in the eyes of law and are liable to be set aside.

5. This Court has given an anxious thought to the afore-said submissions made by learned counsel for the appellant but find the same to be without any legal and factual weight. In fact, there is no question of law what to talk of any substantial question of law for its determination by this Court. First, of all it would be proper to reflect here that the present appellant did not approach to the executing Court with clean hands and did not disclose the actual

and real facts as well as the previous litigation between him and others. It is well settled proposition of law that litigant is bound to produce all relevant documents, if he withholds a vital document to gain advantage on other side, he would be guilty of playing fraud on the Court and opposite party. Such an observation was made by Hon'ble Apex Court in the case of **A.V. Papayya Sastry & others vs. Government of A.P. & others; 2007 (2) RCR (Civil) 431.**

6. The Hon'ble Apex Court in the case of **Ramjas Foundation and another vs. Union of India and others; 2011 (1) RCR (Civil) 176;** has observed that a person who does not come to the Court with clean hands is not entitled to be heard on merits.

7. Adverting to the facts of the case in hand the main contention of learned counsel for the appellant is that earlier suit property was in possession of Dharam Pal and after his demise it came in possession of his wife Asha Rani and thereafter, it was under the possession of respondent No.2-Satwant Singh who while going to abroad handed over the vacant possession to the appellant. It is important to reflect here that the appellant had earlier filed an application under Order I Rule 10 of the Code seeking impleadment as a party but that application was dismissed vide order dated July 25, 2004. It was averred in the said application that after the death of Dharam Pal, the tenancy rights was inherited by his wife Asha Rani and further that he filed an eviction petition against Asha Rani and during the pendency of the said eviction petition, Asha Rani surrendered the vacant possession of the suit property to him. The appellant has made a somersault and has taken absolutely contradictory plea(s). On one hand, he is alleging that respondent No.2 while going abroad surrendered vacant possession of the suit property to him while on the other

hand, it is being averred by him that he preferred an eviction petition against Asha Rani, who during the pendency of said litigation surrendered the vacant possession of the suit property to him. Such a person cannot be relied upon, as on the face of it emerges that he is telling a while lie.

8. Moreover, an application moved under Order I Rule 10 of the Code by the appellant was dismissed by learned trial Court on February 04, 2009 on the ground that in the eviction proceedings the title over the suit property cannot be gone into by the Rent Controller. The appellant never preferred any suit seeking partition of the joint property, especially in the circumstances that he has claimed himself to be the owner of the suit property. In fact, suit for partition was filed by decree holder. However, said suit was dismissed by learned trial Court vide order dated August 07, 2010 but an appeal preferred against the said judgment by the decree holder alongwith Vikram Kumar, both sons of late Munshi Ram stood accepted vide order January 28, 2014 whereby judgment and decree dated August 07, 2010 was set aside. The case was remanded back to the trial Court to provide an opportunity to the plaintiffs to implead their sister as a party to the suit and to decide the case afresh. As such, afore-said judgment dated August 07, 2010 is no more operative. Thus, any observation made in the said judgment does not hold any weight.

9. Not only this, even the appellant has also filed a suit for permanent injunction against the decree holder in respect of the suit property, which was dismissed by learned trial Court vide judgment and decree dated May 09, 2013. In the said judgment it was specifically held that present appellant could not prove his possession over the suit property and he should file a suit for partition.

Thus, taking the case of the appellant from any of the angles, it cannot be said

that he is in possession of the suit property. An objection petition as well as appeal is nothing but devoid of merit and it has been rightly dismissed by the executing Court. Similarly, there is nothing to interfere with the judgment dated April 29, 2016 passed by lower Appellate Court dismissing the appeal against the order dated November 14, 2014 passed by executing Court.

10 In the light of what has been discussed above, this Court does not find any merit in the instant appeal. As such it stands dismissed.

MARCH 14, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*