

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1527 of 2015
Date of decision: 11.09.2017

Tarlok Chand

... Appellant

Vs.

Naresh Chand

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. R.S. Bajaj, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant regular second appeal, at the hands of unsuccessful plaintiff, is directed against the impugned judgment of reversal dated 14.10.2014 passed by the learned Additional District Judge, whereby judgment and decree dated 19.12.2012 passed by the learned trial Court, were set aside by allowing the first appeal of the defendant and suit for possession and recovery filed by the plaintiff-appellant was dismissed by the learned Additional District Judge.

Brief facts of the case, as noticed by the learned first appellate Court in paras 2, 3 and 4 of its impugned judgment, are that Tarlok Chand plaintiff had brought a civil suit for possession of one shop, as detailed in head note of plaint, as well as for recovery of the arrears of rent w.e.f. December 2003 to March 2006 @ Rs.300/- per month on the allegations that plaintiff was

owner-cum-landlord of shop in dispute and the same was located within the Lal Lakir of Phagwara and defendant was inducted as tenant over shop in dispute by plaintiff @ Rs.300/- per month vide writing dated 13.06.2000.

It was further alleged that defendant had not paid rent to plaintiff since December 2003 till date in spite of demand made by plaintiff, as such, the plaintiff did not intend to keep the defendant as tenant in the shop in dispute.

It was further alleged that plaintiff served a legal notice upon defendant dated 22.12.2005 terminating the tenancy of defendant but in spite of notice, the defendant had failed to deliver the vacant possession of shop in dispute and to pay the arrears of rent to the tune of Rs.8400/-.

Defendant was put to notice. He appeared and filed his contesting written statement, raising more than one preliminary objections. He denied the ownership of the plaintiff over the suit land as well as signatures of the defendant on the alleged rent note. Plaintiff-appellant filed his replication. On completion of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled to recovery of possession? OPP
2. Whether the plaintiff is entitled to recovery of arrears of rent from December 2013 to March 2006 at the rate of Rs.300/- per month as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Whether the plaintiff has no cause of action and locus standi to file the suit? OPD
5. Whether the plaintiff has not mentioned the Khasra number of the

suit property? OPD

6. Relief.

In order to prove their respective pleaded cases, both the parties brought on record their documentary as well oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiff has partly proved his case. Accordingly, suit for possession and recovery filed by the plaintiff was partly decreed, directing the defendant to hand over the vacant possession of the suit shop to the plaintiff. Feeling aggrieved, defendant filed his first appeal, which came to be allowed by the learned first appellate Court vide its impugned judgment of reversal dated 14.10.2014. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

Bare reading of the impugned judgment passed by the learned Additional District Judge, particularly cogent findings recorded in paras 25 to 27 of the impugned judgment, will make it crystal clear that neither the plaintiff-appellant could prove his ownership over the suit shop nor he could prove the rent note by bringing on record cogent and convincing evidence. In the absence of any document of title, plaintiff would have no cause either for possession or for recovery of alleged rent right from day one. He being the plaintiff, onus was on him to prove his pleaded case, but the plaintiff failed to discharge his onus in this regard. Having said that, this Court feels no hesitation to conclude that the learned first appellate Court was well within its jurisdiction to pass the impugned judgment of reversal and the same deserves to be upheld.

Before arriving at its judicious conclusion, the learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as evidence brought on record, in the correct perspective. The relevant and cogent findings recorded by learned Additional District Judge in paras 25 to 27 of the impugned judgment, which deserve to be noticed here, read as under: -

“First of all, plaintiff Tarlok Chand has alleged himself to be owner of khasra No.23//11/99(0-1) on the basis of exchange deed dated 29.05.1995 by his father Sarwan Singh but to the utter astonishment, the said exchange deed has not been proved on record. Though plaintiff Tarlok Chand tried to prove the execution of exchange deed dated 29.05.1995 by making examination of PW1 Sarwan Ram @ Sarwan Singh father of the plaintiff yet PW1 Sarwan Ram @ Sarwan Singh was not subjected to cross-examination. Moreover, PW1 Sarwan Ram @ Sarwan Singh in his examination-in-chief vide affidavit Ex.PA did not testify regarding the execution of exchange deed dated 29.05.1995 as revealed by PW5 Tarlok Chand in his cross-examination. PW5 Tarlok Chand plaintiff failed to explain on record why the alleged exchange deed was withheld by him.

Ex.P10 is the copy of jamabandi for the year 2009-2010 wherein khasra No.23//11/99(0-1) over which the demised shop has been erected has been recorded in the name of 'Jumla Mushtarka Malkan' as owner and Inder Ram grandfather of

plaintiff and defendant has been reflected to be in cultivating possession. Meaning thereby, Inder Ram predecessor-in-interest of the plaintiff and defendant had got only possessory title over disputed khasra number being 'Gairmarusi'. The name of plaintiff has not been got incorporated in the columns of jamabandi on the basis of alleged exchange deed. So plaintiff has got no right to assert his title over suit property. Plaintiff has miserably failed to prove his title over the demised shop.

*The alleged rent note dated 13.06.2000 vide which the defendant Naresh Chand was inducted as a tenant by plaintiff has not been proved on record in accordance with law. Though the alleged rent note dated 13.06.2000 has been exhibited on record as Ex.P2, yet as per the settled law, mere exhibition of a document does not dispense with the proof. Plaintiff was enjoined upon to examine its marginal witness Gurmej Singh to prove the rent note dated 13.06.2000 more so when the defendant has denied his signatures upon the same. He was required to prove the signatures of defendant by making examination of any witness or Handwriting Expert as observed by Hon'ble High Court of Andhra Pradesh in citatin titled as **“Mohammed Sultan Vs. Miss Nawazunnisa 1997 (Suppl.) Civil Court Cases 613”** (supra) but the plaintiff failed to prove the signatures of defendant upon the alleged rent note dated 13.06.2000 by making examination of any witness or Handwriting Expert.”*

When learned counsel for the appellant was confronted with the abovesaid cogent findings recorded by the learned first appellate Court, particularly to refer to any cogent evidence, so as to show the ownership of the plaintiff-appellant and also the relevant evidence qua the rent note, he had no answer and rightly so, it being a matter of record. It has come on record that late Sh. Inder Ram, grandfather of the plaintiff-appellant was recorded as Gair Maurushi in the column of cultivation but in the column of ownership, the plot under the shop was recorded as Jumla Mushtarka Malkan. It was so recorded in the relevant revenue record i.e. jamabandi for the year 2009-2010 Ex.P10. It is neither pleaded nor argued case on behalf of the appellant that either his grandfather or his father or the plaintiff himself got his alleged share in Jumla Mushtarka Malkan separated in accordance with law.

Once this exercise was not undertaken on behalf of the appellant or his predecessors-in-interest, they had no right to put their claim qua title of the suit property. Similarly, once the defendant in his written statement specifically denied his signatures on the rent note Ex.P2 dated 13.06.2000, plaintiff was put at caution and he must have discharged his onus in this regard by producing any fingerprints and handwriting expert, so as to prove the rent note, in accordance with law. However, plaintiff did not do so and that too for no good reasons. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned first appellate Court committed no error of law, while passing the impugned judgment of reversal and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellant

failed to point out any patent illegality or perversity in the impugned judgment of reversal passed by the learned first appellate Court. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the regular second appeal at the hands of this 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 **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 since no illegality and perversity has been found in the impugned judgment of reversal passed by the learned first appellate Court, the same deserves to be upheld. The regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground 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.

[RAMESHWAR SINGH MALIK]
JUDGE

11.09.2017

vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No