

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5210 of 2016 (O&M)

Date of Decision: 17.11.2017

Sujan Singh

.....Appellant

Vs.

Adarsh Kumar and anr.

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Ms.Madhu P.Singh, Advocate, for the appellant.

RITU BAHRI, J. (ORAL)

CM No.11441-C of 2017 and
CM No.13547-C of 2017

By way of these application, appellant wants to file rent deed dated 01.04.2006 as Annexure A-5 and photocopy of Vat Form, Vat Challan and Sale Receipt i.e. Annexure A-1 to A-4 as additional evidence. These applications are liable to be dismissed as character of the defendant came to an end because after purchase of property vide Ex.P2 dated 03.07.2008, it was transferred in his name vide transfer deed dated 05.10.2011. So, these evidences are not necessary.

Both the applications stand dismissed.

Main Case

The appellant has come up in appeal against the judgment and decree dated 13.01.2016 of the trial Court and judgment and decree dated 27.07.2016 whereby the suit filed by appellant Adarsh Kumar for possession by way of partition by meets and bounds of shop measuring 8 Sarsai, i.e. 9

feet X 25 feet as show in attached site plan marked as ABCD has been decreed with mesne profit.

The brief facts of the case are that plaintiff and defendant No. i.e. Mohinder Singh had purchased the shop in question in equal share vide sale deed document No.2080 dated 03.07.2008 which was Ex.P2 on record. The plaintiff and defendant No.2 had received the possession of shop in question at the spot on the very next day of the purchase of the shop in question. The defendant No.1 Sujan Singh doing the business of sale of garments in the above said shop under the name and style of firm M/s Harry Fashion House and he was in possession of the entire shop. The defendant No.2 had transferred his ½ share of shop in question in favour of defendant No.1 vide transfer deed No.2978 dated 05.10.2011. Even the defendants had admitted this fact regarding the sale of property in dispute by both the plaintiff and defendant No.1 vide sale deed Ex.P2 and possession of defendant No.1 was on the property in dispute from the date of purchase. Now, by filing the present suit, the plaintiff seek the possession by way of partition of the property in dispute to the extent of his share as defendant No.1 was in exclusive possession of it.

Both the Courts below after framing the necessary issues and going through the evidences have returned to the findings that, as per sale deed dated 03.07.2008 Ex.P2, the possession of the property in dispute has been given to the plaintiff as well as defendant No.2 in equal share at the time of purchase the property in dispute and it had never been mentioned that in the sale deed that it was in the possession of defendant No.1 as contended by defendants. The defendants No.2 had transferred the property

was no dispute regarding this fact.

Once the defendant No.1 became owner of the half share of the transfer by his father, the suit has been decreed after calculating the mesne profit for accompanying half portion of the plaintiff. The mesne profit have been calculated taking into account the deposition of the DW2 Madhu Sudan Sharma Clerk, Red Cross Society, Sri Muktsar Sahib, who deposed that shop No.8, shop No.11 and shop No.5 were near the property in dispute i.e., on opposite side. The shop No.8 was in the possession of Pawan Kumar at the monthly rent of Rs.570/-, shop No.11 on the monthly rent of Rs.496/- and shop No.5 on the monthly rent of Rs.496/-. Even he had produced on record regarding the rent of above stated shops. But in his cross examination, he has admitted that the length and breadth of the above stated shop is 7' X 14' and on the other hand the property in dispute was having dimension 9'-0" X 25'-0". The above stated shop mentioned by him were small and old as compared to the property in dispute. The above stated shop were given on rent by the government agency i.e. Red Cross for the year 1976-77. So in view of the above discussion, both the Courts are of the opinion that the evidence produced on record by the plaintiff was more scientific and as per Collector rate to determine the mesne profits of the property in dispute. Though the plaintiff was claiming the mesne profits from the purchase of property from 03.07.2008, but he was entitled to mesne profits from the three years earlier to the date of filing of the present suit as per limitation. So, he was entitled to the mesne profits from 15.11.2009 till the filing of the present suit i.e. he was entitled to the rent half of Rs.2857/- per month from 15.11.2009 to 31.03.2010. This findings of fact has been rightly recorded on the basis of evidence.

So in the light of the discussion, the orders of the Courts below do not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

17.11.2017

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No