

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.5993 of 2016

Date of decision:18.8.2017

Hardeep Singh

...Appellant

Versus

Karnail Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Abhimanyu Kalsy, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for possession was dismissed by the learned trial court, vide its impugned judgment and decree dated 12.1.2012 and his first appeal was also dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 17.9.2015, upholding the judgment and decree of learned trial court, plaintiff has approached this Court, by way of instant regular second appeal.

Brief facts of the case, as noticed by the learned first appellate court in paras 2 and 3 of the impugned judgment, are that the plaintiffs filed suit for possession of property bearing No.B-VIII-527 situated in Naya Mohalla, Ludhiana, consisting of one room and one shop four walls fully detailed and described in the head note of the plaint on the ground that they had been dispossessed on 18.5.1999 illegally, forcibly, without any right and justification under the garb of Execution Petition in Civil Suit No.76 of

1986/195 of 1986 in which the plaintiffs were never party. It was further averred that Sh. Kundan Singh was the owner in possession of the property in dispute, who died on 15.5.1977 leaving behind the defendants and Jarnail Singh, Kirpal Singh, Manjit Singh, Bhupinder Singh etc, as his legal heirs. He executed a will and according to the Will, the mesne profits out of the property by way of rent etc. were to be used by Smt. Rawel Kaur his widow. It was also averred that Smt. Rawel Kaur let out the property to the plaintiffs on 23.11.1990 on monthly rent of Rs.200/- per month and delivered its vacant possession of the premises in dispute to the plaintiffs. The rent note was executed by the plaintiffs in favour of Smt. Rawel Kaur, defendant No.2 on 23.11.1990 which was scribed by Ranbir Chand Vasika Navis and since then, the plaintiffs were in exclusive possession of the property in dispute as a tenant on a monthly rent of Rs.200/- per month. Earlier defendants No.1 and 2 who are the son and mother posted threats of illegal dispossession of the plaintiff from the property in dispute and due to this reason, the plaintiffs filed a suit for permanent injunction, bearing No.983 of 19.10.1992, but during the pendency of the suit, defendant No.1 knowing fully well that the suit was pending in which injunction order was passed, dispossessed the plaintiff from the premises in question by getting the warrants of possession in a suit to which the plaintiffs were never a party and compelled the plaintiffs to file suit for possession.

Having been put to notice, defendant No.1 appeared and filed his contesting written statement, raising more than one preliminary objections. Defendant No.2 died during the pendency of the suit. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether plaintiff is entitled to possession of suit property? OPP
2. Whether suit in the present form is not maintainable? OPD
3. Whether plaintiff has got no right, title or interest in the suit property? OPD
4. Whether the suit is barred U/O 2 Rule 2 CPC? OPD
5. Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD
6. Whether suit has not been properly valued for the purpose of court fee and jurisdiction? OPD
7. Whether plaintiff has concealed material facts from this Court if so its effect? OPD
8. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiffs have failed to prove their case for want of sufficient and cogent evidence. Accordingly, their suit for possession was dismissed by the learned trial court, vide its impugned judgment and decree dated 12.1.2012. Feeling aggrieved, plaintiffs filed their first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned judgment and decree dated 17.9.2015. Hence this regular second appeal, at the hands of unsuccessful plaintiff No.2-appellant.

Heard learned counsel for the appellant.

It is a matter of record that defendants were owners in possession of the suit land. Plaintiff-appellant was claiming possession on the basis of alleged tenancy, pointing out that he was forcibly dispossessed by the defendants. Plaintiff-appellant is not claiming title over the suit land. It goes without saying that exceptions apart, possession goes with the title. Further, appellant being the plaintiff, onus was on to him to prove his pleaded case by leading cogent and convincing evidence. However, he failed to do so. In such a situation, plaintiff was bound to fail. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

In fact, in the circumstances of the case, plaintiff-appellant ought to have filed a suit for mandatory injunction, if any. Ownership of the defendants was not in dispute. So far as alleged forcible dispossession of the plaintiffs was concerned, they failed to do so. Further, the suit of the plaintiffs-appellant was also hit by the principle contained in Order 2 Rule 2 of the Code of Civil Procedure as earlier suit filed by them was dismissed as withdrawn. Under these undisputed facts and circumstances of the case, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

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

“So, from the above said oral as well as documentary evidence, it transpires that the plaintiffs were not dispossessed illegally and forcibly, rather, the defendant Karnail Singh took the possession through the process of court and the story propounded by the plaintiffs regarding taking possession of property on rent from Ravel Kaur is an after thought story. Even the plaintiffs have failed to produce the original rent note on record during trial, for the reasons best known to them. More over, the entire controversy was set at rest by the Ld. Appellants Courts regarding possession of suit property and it was held that only Karnail Singh was entitled to get the possession. The Ld. Lower Court has rightly held that the plaintiffs failed to prove their case, as set up by them in the plaint. The findings returned by the Ld. Lower Court are well reasoned and are sustainable in the eyes of law. As such, the findings returned by Ld. Lower Court on issue No.1 are affirmed. No arguments were advanced on issues No.2 to 6 and as such, the same are also affirmed.”

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286*** and ***Santosh Hazari Versus 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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

18.8.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No