

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

**RSA No.6257 of 2016 (O&M)
Date of decision: 03.08.2017**

Sarwan Dass (deceased) through LRs

... Appellant

Vs.

Om Parkash

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Arvind Kashyap, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendant is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for possession on the basis of title filed by the plaintiff, was decreed by the learned trial Court vide its impugned judgment and decree dated 25.11.2014 and first appeal of the defendant was also dismissed by the learned Additional District Judge vide impugned judgment and decree dated 11.12.2015.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of the impugned judgment, are that the plaintiff filed a suit for possession of the house on the averments that he was owner of the same and defendant was

a tenant for the last about 8 years on a monthly rent of Rs.300/-, vide rent deed/agreement dated 15.06.2000, executed between the parties. Defendant had been paying rent of the house to the plaintiff from 01.07.2000 to 01.10.2005 and thereafter from 01.10.2005, the defendant had paid nothing to the plaintiff in the shape of rent till date. Plaintiff had got served a legal notice dated 08.08.2008, through his counsel to defendant under registered post to quit, which was duly served upon the defendant. Defendant filed reply on 23.08.2008 to the legal notice through Sh. S.N. Aggarwal, Advocate Phillaur, which was vague and ambiguous and had no relevance to the contents of the legal notice. The defendant was defaulter of non-delivery of the possession of the house in dispute to the plaintiff and non-payment of rent from 01.10.2005 till date. The tenancy of the defendant had been terminated by registered legal notice dated 8.8.2008. Defendant was liable to be evicted from the house in dispute and thereafter, the defendant was to be treated as trespasser. Plaintiff had asked the defendant to deliver the possession of the suit property, but the defendant finally refused to admit the claim, which led him to file the suit.

Defendant was served. He appeared and filed his contesting written statement, raising more than one preliminary objections. He also raised the plea of fraud against the plaintiff, saying that sale deed and rent deed were fictitious. He denied that he sold the suit property to the plaintiff. Case of the plaintiff was alleged to be based on fraud and misrepresentation. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled for possession as owner of

the house in dispute to the extent of his share? OPP.

2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Relief.

In order to prove his pleaded case, plaintiff brought on record documentary as well as oral evidence. However, defendant himself appeared as his own witness as DW1 and did not lead any other 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 duly proved his case. Accordingly, suit for possession on the basis of title was decreed by the learned trial Court vide its impugned judgment and decree dated 25.11.2014. Defendant felt aggrieved and filed his first appeal, which also came to be dismissed by the learned Additional District Judge vide impugned judgment and decree dated 11.12.2015. Hence this regular second appeal at the hands of unsuccessful defendant through his legal representatives.

Heard learned counsel for the appellant.

First of all, when the defendant-appellant was intending to raise the plea of fraud, a heavy onus was on him to prove the said plea of fraud by leading cogent and convincing evidence. It is a matter of record that defendant-appellant appeared as DW1 and made a self-serving statement before the learned Court, without there being any other corroborative evidence, either documentary or oral. Further, in his cross-examination, defendant-appellant admitted his signatures on the sale deed Ex.P1. He also admitted his signatures on the rent note dated 15.05.2000 Ex.P4. Under these undisputed facts and

circumstances of the case, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

Plaintiff duly proved his case by leading cogent and convincing evidence. Local Commissioner prepared his report Ex.P10 in the presence of both the parties. Defendant also admitted his signatures on the site plan Ex.P5. Copy of legal notice Ex.P6 was also proved. Thus, once the sale deed Ex.P1, rent note Ex.P4, legal notice Ex.P6, Local Commissioner's report Ex.P10, site plan Ex.P5, extract of the register Ex.P2 and endorsement Ex.P3 were duly proved on record by the plaintiff, leading corroborative evidence, by producing as many as six witnesses, his suit was rightly decreed by the learned Courts below by recording their concurrent findings of facts and the impugned judgments and decrees deserve to be upheld, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***Gautam Sarup Vs. Leela Jetly and others, 2008 (7) SCC 85.***
2. ***Santa Singh Vs. Tarsem Singh, 2010 (67) RCR (Civil) 520.***
3. ***Devi Lal Vs. Shekaran and another, 2011 (5) RCR (Civil) 615.***
4. ***Usha and others Vs. Subhash Chander and others, 2014 (5) RCR (Civil) 813.***
5. ***M/s Machhi Ram Kishan Singh Sidana, Rice Mills Vs. Sham Singh and others, 2015 (9) RCR (Civil) 506.***
6. ***RSA No.4070 of 2016 (Chamkur Singh and another Vs. Raghbir Singh and another) decided on 13.01.2017.***

7. RSA No.1239 of 2016 (Satbir Singh Vs. Mukesh Rani and others), decided on 17.01.2017.

Before arriving at his just conclusion, the learned Additional District Judge 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 first appellate Court in paras 24 to 26 of the impugned judgment, which deserve to be noticed here, read as under: -

“Defendant Sarwan Dass, while stepping into witness box as DW1, tendered into evidence his affidavit Ex.DW1/A, wherein he has reiterated his version, as set out in the written statement. During cross-examination he deposed that property in dispute is measuring 4-1/2 marlas. Sale deed Ex.P1 bears his signature, as well as his thumb impression. He has identified his signature and thumb impression, on Ex.P4. He deposed that Ex.P10 also bears his signature, which is report of Quanungo. Quanungo visited the spot at that time, Sarpanch and other residents of village were present there. He deposed that he had received legal notice from the counsel of the plaintiff before institution of the suit. He deposed that he had not borrowed any amount from Om Parkash, plaintiff.

On the analysis of the above evidence, it is proved that Sarwan Dass, defendant sold the property measuring 4-1/2 marlas with specific boundaries, out of khasra No.53/1(2-4), for consideration of Rs.75,000/- to the plaintiff in the presence of

Pritam Dass, Lambardar, village Saifabad and Swarna Ram son of Jit Ram, scribed by Subhash Chander Sharma, Deed Writer and it bears the signatures, thumb impressions and photograph of the defendant and same was got registered from the office of Sub Registrar, Phillaur. The said sale deed has been reflected in the revenue record, as is evident from the copy of the jamabandi Ex.P9. Both the parties executed rent note dated 15.6.2000, Ex.P4, whereby the defendant took the property in dispute on rent from the plaintiff on a monthly rent of Rs.300/- . Ex.P5 is the site plan of the property in dispute. No counter site plan has been filed by the defendant. Though the defendant in his pleading has denied the execution of the above sale deed and rent note and had taken the plea of fraud, but he has neither filed any counter claim nor challenge the said documents by filing separate suit and thus, he has failed to prove that said documents are forged and fabricated documents. The learned trial Court has rightly observed that from the evidence on record the plaintiff has proved the execution and registration of the sale deed dated 15.5.2000 Ex.P1 regarding the property in dispute. Report Ex.P10, of Local Commissioner, prepared in the presence of parties, and site plan Ex.P5, proves the possession of the defendant over the property in dispute purchased by the plaintiff. It, thus, sows that after the purchase of the suit property from the defendant, the defendant was inducted as a tenant in the suit property by the plaintiff vide rent note dated

15.6.2000 Ex.P4.

Admittedly, the plaintiff served upon a legal notice under Section 106 of the Transfer of Property Act, dated 8.8.2008, copy of which is Ex.P6, to the defendant through registered post, thereby terminating the tenancy and calling upon the defendant to vacate the premises, within 15 days from the receipt of the notice, but defendant has failed to vacate the premises and thus, defendant has no right to remain in possession over the property in dispute. The plaintiff is entitled to possession of the house in dispute to the extent of his share from the defendant and suit is well maintainable. The findings of the learned trial Court on all the issues are based on correct appreciation of evidence on record and law on the point, and same are, thus, affirmed. The points of determination are thus, disposed of accordingly.”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in the impugned judgments and decrees passed by both the learned Courts below. 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 has been found in the impugned judgments and decrees passed by both the learned Courts below, the same deserve to be upheld. Present 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

03.08.2017
vishnu

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