

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

RSA No.1077 of 2017 (O&M)

Date of decision: 23.02.2017

Nand Singh (deceased) through LRs

... Appellants

Vs.

Amrik Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Mohit Garg, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Legal representatives of plaintiff late Sh. Nand Singh are in regular second appeal against concurrent findings of facts recorded by both the learned Courts below, whereby suit for permanent injunction was partly decreed by the learned trial Court and the first appeal of the plaintiffs-appellants, was dismissed by the learned first appellate Court, upholding the impugned judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in paras 2 and 3 of its impugned judgment, are that the plaintiff Nand Singh had filed suit for permanent injunction restraining the defendants, their agents, attorneys and employees from interfering or cause to interfere in any manner whatsoever in the peaceful possession, occupation and use of tenancy premises under the plaintiff consisting of one Hall measuring 70' x 14', A Shed measuring

56' x 16' and Open Space forming portion of property bearing Municipal Corporation No.B-XXX-1560 (Old) and B-XXX-4179 (New) situated at Street No.6, Beant Pura, Chandigarh Road, Ludhiana and further restraining the defendants from demolishing the boundary wall and the tenancy premises of the plaintiff as shown red in the site plan attached and bounded as under:-

North: Street,

South: House of Sh. Charanjit Singh,

West: Chandigarh Road,

East: House of Moti Lal

In brief, the facts of the suit filed by the plaintiff are that plaintiff was a tenant in the premises consisting of one Hall measuring 70' x 14' as fully detailed and described in the head note of the plaint on monthly rent of ₹ 700/- including house tax and was running his workshop of manufacturing Hosiery Machines in the name and style of M/s S.R. Engineering Works as its sole proprietor. The tenancy premises were shown red in the site plan as fully detailed and described in the head note of the plaint. The said premises fully described in the head note of the plaint were taken on rent by the plaintiff from its previous owner/landlord Sh. Gursharan Singh son of Sh. Amar Singh on monthly rent of ₹560/- including house tax in April, 1988. The tenancy between the plaintiff and said Gursharan Singh was got created through Sh. Rattan Singh son of Sh. Phuman Singh who was residing almost opposite to the property in dispute. The plaintiff was the first tenant in the demised premises under the tenancy of the plaintiff of the property in suit. The other tenants were inducted later on in the year 1990 and afterwards. Later on, the rent was increased to ₹700/- per month including House Tax with the mutual consent of the original

landlord Gursharan Singh and the plaintiff in the presence of aforesaid Rattan Singh and Harbhajan Singh in the year 1992. An electric connection of 10 KW stands installed in the tenancy premises of the plaintiff, from which the plaintiff had been getting power supply to the premises under the tenancy of the plaintiff for running his workshop. Sh. Gursharan Singh, the original owner/landlord, had been realizing the rent of tenancy premises from the plaintiff during his lifetime and after the death of Sh. Gursharan Singh in the year 1996, his son became the owner/landlord of the property in suit and started realizing the rent of the tenancy premises from the plaintiff at the said agreed rate of ₹700/- per month through payee's account cheques and the rent upto 30.11.2007 stands paid by the plaintiff to the defendant No.1. Defendants No.2 to 4 were openly asserting that they had purchased the entire property from the defendant No.1, Amrik Singh, but there was no intimation to the plaintiff that defendant No.1 had sold the property in dispute to the defendants No. 2 to 4 or from the defendants No.2 to 4 that they had purchased the property in dispute from the defendant No.1. For the last three months prior to filing the present suit, defendants No.2 to 4 were pressing the plaintiff and other tenants in the property in dispute to vacate the tenancy premises and in the alternative, they would take the forcible possession of the tenancy premises of the plaintiff and the other tenants and in the possession of the other tenants. When the plaintiff and other tenants refused to accede to this unreasonable and illegal demands of the defendants No.2 to 4, the defendants threatened the plaintiff and other tenants for taking the forcible possession of the property in dispute on getting an opportunity. On 01.01.2008, defendants No.2 to 4 along with 2/3 other undesirable persons came to the tenancy premises of the plaintiff and started

demolishing the boundary wall of the demised premises and in fact, demolished the portion of the boundary wall of the property in dispute and also threatened the plaintiff and the other tenants for taking the possession of the property in dispute by force. The matter was reported to the Local Police by the other tenants of the premises in dispute and the boundary wall so demolished by the defendants No.2 to 4 was got raised again with the intervention of the local police, but while going defendants No.2 to 4 continued their threats for again demolishing the boundary wall of the demised premises and also taking the forcible possession of the tenancy premises of the plaintiff on getting an opportunity. On 06.03.2008, defendants No.2 to 4 came to the tenancy premises of the plaintiff and demolished the portion of the boundary wall of the property in dispute and also tried to take the forcible possession of the tenancy premises of the plaintiff, but the defendants were prevented from further demolishing the property in dispute by the residents of the locality, who had collected at the spot, but while going the defendants continued their threats for taking the forcible possession of the tenancy premises of the plaintiff and openly declared that the defendants had influence with the local police and other high officials. The defendants were requested not to take law into their hands, but the defendants refused to listen to the requests of the plaintiff and other residents of the locality. The plaintiff had the legal right to protect his tenancy rights over the tenancy premises and there was no other remedy available to the plaintiff to protect his right except to file the suit against against the defendants. Earlier the plaintiff had filed a suit for permanent injunction against defendant No.1 and one Shammi Kapoor, who was a tenant in the portion of the property in dispute, and the suit was partially decreed by the court of Mrs. Harinder Kaur Sidhu, the

then Learned Civil Judge (Junior Division), Ludhiana vide judgment and decree dated 12.01.2008. Defendant No.1 had also filed an ejectment petition against the plaintiff for realizing the arrears of rent.

Despite service, defendant No.3 did not appear and was proceeded against ex-parte vide order dated 28.04.2008. Plaintiff suffered a statement on 13.05.2008 that he does not seek any relief against defendant No.1 and accordingly, service on him was dispensed with. However, defendants No.2 and 4 appeared and filed their contesting written statement, taking more than one preliminary objections. Plaintiff did not file any replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is in possession of the suit property? OPP.
2. If issue No.1 stood proved in favour of the plaintiff whether he is entitled to relief of permanent injunction as prayed for? OPP.
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff has suppressed the true and material facts from the court? OPD
5. Whether the plaintiff has no cause of action to file the present suit? OPD
6. Relief.

In support of their respective stands taken, both the parties produced their documentary as well as 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 the plaintiff has failed to prove his case in toto. Accordingly, suit of the plaintiff was partly decreed for permanent injunction restraining the defendants from interfering in his

possession qua one hall measuring 50' x 14 ', which forms part of the suit property bearing Municipal No.B-XXX-1560 (old) and B-XXX-4179 (New), situated in street No.6, Beant Pura, Chandigarh Road, Ludhiana. Dissatisfied, plaintiff filed his first appeal, which came to be dismissed by the learned first appellate Court, vide its impugned judgment and decree dated 08.12.2016. Hence this regular second appeal at the hands of legal representatives of the plaintiff.

Heard learned counsel for the appellants.

It is the settled proposition of law that onus would be on the plaintiff to prove his pleaded case, by leading cogent and convincing evidence. However, in the present case, plaintiff miserably failed to prove that his tenancy area was covering the entire suit property detailed by him in the head note of the plaint. He proved his case but partly. Accordingly, the learned trial Court partly decreed the suit vide its impugned judgment and decree dated 23.01.2015. Once the plaintiff did not prove his case beyond one hall measuring 50' x 14', particulars of which have been noticed hereinabove, the learned trial Court was well within its jurisdiction to partly decree the suit of the plaintiff, because there was no sufficient evidence available on record to decree the suit of the plaintiff in toto. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

Before arriving at its judicious conclusion, learned first appellate Court reconsidered and re-appreciated all the relevant facts of the case as well as the evidence brought on record, in correct perspective. The cogent findings recorded by the learned first appellate Court in paras 13 and 14 of its impugned

judgment, which deserve to be noticed here, read as under: -

“Perusal of original file shows that plaintiff/appellant Nand Singh has filed suit for permanent injunction restraining the defendants, their agents restraining them from interfering in any manner whatsoever in the peaceful possession and occupation and use of tenancy premises as fully detailed in the head note of the plaint and also restraining them from demolishing the boundary wall and tenancy premises of the plaintiff as shown red in the site plan attached with the plaint. Further perusal of file shows that defendant No.1 did not come present in the court in spite of his service and he was proceeded against ex-parte accordingly. Respondents No. 2 to 4 put their appearance in the court and filed joint written statement and they took a specific plea that plaintiff/appellant did not approach the court with clean hands.

As discussed above, first of all it was the duty of the plaintiff/appellant Nand Singh to prove his case by way of leading cogent and convincing evidence and in order to prove his case he himself stepped into witness box as PW1. Though in his examination in chief he supported his case as pleaded in the plaint but during cross examination he admitted categorically that the facts which he has narrated in his examination in chief he has no documentary proof in that regard. He further added that the tenancy agreement was oral. He was specifically questioned by the opposite counsel that In your affidavit you have mentioned regarding tenancy of the portion measuring 70'x14', whether you

are having any documentary proof in that regard?. In reply to that question, PW1 stated that he has no proof regarding tenancy of the hall measuring 70'x14'. It is also in the fitness of things to mention here that apart from Nand Singh, no other witness has been examined by the plaintiff in order to prove his case. It is well settled law that plaintiff has to stand his upon legs and he has to prove his case independently and he cannot take the benefit of weaknesses of the defence. It is also worthwhile to mention here that when on 10.4.2013 he was specifically questioned about hall of measurement 70'x14', then he could not produce any proof regarding the tenancy of that hall and his further cross examination was deferred in order to bring proof in that regard. PW Nand Singh again stepped into witness box on 23.7.2014, but again on 23.7.2014 he could not produce any proof regarding tenancy of hall measuring 70'x14' and he also admitted in his cross examination that he is having no proof regarding tenancy of hall measuring 70'x14'. This admission made by P W1 goes to the root of this case. In other words, Pw1 Nand Singh plaintiff/appellant miserably failed to prove his tenancy over the hall measuring 70'x14'. So, learned trial court rightly appreciated the evidence led by appellant in that regard and suit filed by plaintiff/appellant has been rightly partly decreed through impugned judgment and decree dated 23.1.2015 and there is no illegality or infirmity of any kind as alleged by the appellant.”

During the course of hearing, when specifically and repeatedly

asked to refer to any material available on record enabling this Court to interfere in the matter, learned counsel for the appellants had no answer and rightly so, it being a matter of record. Since the plaintiff could prove his case partly, it was accordingly decreed by the learned Courts below. Ownership of the defendants had never remained in dispute. In spite of that fact the learned trial Court while partly decreeing the suit of the plaintiff, restrained defendants from interfering in possession of the plaintiff in one hall measuring 50' x 14 ', which forms part of the suit property bearing Municipal No.B-XXX-1560 (old) and B-XXX-4179 (New), situated in street No.6, Beant Pura, Chandigarh Road, Ludhiana. Beyond this, there was no sufficient evidence to prove the case of the plaintiff qua the remaining property in dispute. No such evidence or material was pointed out by learned counsel for the appellants before this Court as well. Under these circumstances, 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, for this reason also.

Learned counsel for the appellants could not point out any patent illegality or perversity in either of the impugned judgments and decrees passed by the learned Courts below. He also could not raise any question of law, much less substantial question of law, 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. Concurrent findings of facts recorded by the learned Courts below have been found factually correct and legally justified, based on sound reasons, which deserve to be upheld. 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 either of the impugned judgments and decrees passed by both the learned Courts below, the same deserve 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.

23.02.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

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