

RSA No. 1402 of 2017 (O&M)

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

**RSA No. 1402 of 2017 (O&M)
Date of Decision: 26.7.2017**

Ranjit Singh

.....Appellant

Vs.

Swaran Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. R.K. Arya, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Defendant is in regular second appeal, against the concurrent findings of facts recorded by both the learned courts below, whereby suit for permanent injunction filed by the plaintiff-respondent, restraining the defendant-appellant from interfering in the peaceful possession of the plaintiff, was decreed by the learned trial court vide impugned judgment and decree dated 2.8.2013 and first appeal of the defendant also came to be dismissed by the learned first appellate court vide impugned judgment and decree dated 27.5.2015.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that respondent-plaintiff Swaran Singh instituted a suit for permanent injunction against the defendant/appellant Ranjit Singh before the learned trial court, on the

RSA No. 1402 of 2017 (O&M)

premises that shop, as detailed and described in the head note of the plaint, was originally owned by Gurmit Kaur daughter of Shri Parkash Singh of village Purana Shalla, Tehsil and District Gurdaspur. One Sunil Kumar son of Shri Ram Parkash of village New Shalla, was in possession as tenant under said Gurmit Kaur. The defendant threatened for forcibly dispossessing Sunil Kumar. Said Sunil Kumar filed a civil suit for permanent injunction against Ranjit Singh-defendant, which was decreed vide judgment and decree dated 6.8.2004 and the defendant was restrained from interfering in the possession of Sunil Kumar. The electric meter was also installed in the said shop.

It was further averred that Gurmit Kaur sold shop measuring 0-1 marla forming part of Rect. No. 18, killa No. 10/2/1/ (3-6), Rect. No. 18, killa No. 10/2/2/ (0-1), Rect No. 17 killa No. 2/2 (2-2), killa No. 2/3 (2-2), Rect. No. 26 killa No. 28/2/1 (0-3), i.e. 1/7th share in favour of the plaintiff, vide registered sale deed dated 19.1.2005 along with malba of the shop vide separate receipt dated 19.1.2005. Sunil Kumar delivered possession in favour of the plaintiff. It was further averred that the defendant had no concern with the shop in dispute, who was a headstrong person and threatened to forcibly dispossess the plaintiff from the shop in dispute. Plaintiff/respondent requested the defendant/appellant to refrain himself from his illegal act and threat but the defendant refused to admit the claim of the plaintiff/respondent.

Upon notice, defendant appeared and filed his contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is entitled for permanent

RSA No. 1402 of 2017 (O&M)

injunction as prayed for? OPP

2. Whether the suit is not maintainable? OPP

3. Whether plaintiff has not come to the court with clean hands? OPD

4. Whether the suit is bad for non-joinder of necessary parties? OPD

5. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral 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 exclusive possession over the suit property, by leading cogent and convincing evidence. Accordingly, his suit for permanent injunction was decreed by the learned trial court, vide impugned judgment and decree dated 2.8.2013. Feeling aggrieved, defendant approached the learned first appellate court by way of his first appeal, which also came to be dismissed, vide impugned judgment and decree dated 27.5.2015. Hence this regular second appeal at the hands of the defendant.

Heard learned counsel for the appellant.

Ownership of plaintiff over the shop in question, on the basis of sale deed (Ex.P1), has gone undisputed on record. Pursuant to the sale deed (Ex.P1), plaintiff was put in possession over the suit property as owner. When the defendant-appellant, on the basis of Will allegedly executed by his father namely late Sh. Parkash Singh in favour of the defendant, started interfering in the peaceful possession of the plaintiff, he was compelled to approach the learned court of competent jurisdiction by filing suit for

RSA No. 1402 of 2017 (O&M)

permanent injunction.

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below would make it crystal clear that the same are based on cogent findings, thus, no fault can be found with either of the impugned judgments. When asked, as to whether the appellant-defendant ever filed any litigation setting up the Will in his favour, learned counsel for the appellant fairly conceded that suit for declaration on the basis of the Will allegedly executed by his father in his favour, was filed by the appellant but the same had been dismissed by the learned trial court. Having said that, this Court feels no hesitation to conclude that appellant could not establish either his possession or ownership on the suit property, because of which he had no authority to interfere in the peaceful possession of the plaintiff. In this view of the matter, it can be safely concluded that the learned courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 12 of its impugned judgment, which deserve to be noticed here, read as under:-

“ Admittedly, the shop in question was originally owned by Gurmit Kaur, from whom the respondent/plaintiff had purchased the same vide sale deed Ex.P1. It is also not in dispute that the suit property was originally in possession of Sunil Kumar being a

tenant under Gurmit Kaur and the said Sunil Kumar had filed a civil suit against appellant for the grant of permanent injunction as appellant had threatened him to interfere in possession of the shop in question. It is also not in dispute that the said civil suit was decreed in favour of Sunil Kumar vide judgment Ex.P12. It is evident from Ex.P12 that Sunil Kumar specifically claimed himself to be tenant under Gurmit Kaur. Now the plea of the appellant is that said Sunil Kumar had delivered the vacant possession to him during the proceedings of the appeal filed by him challenging the judgment and decree passing by civil court in favour of Sunil Kumar. For the reasons best known to him the appellant has not examined said Sunil Kumar in order to prove his plea that in fact said Sunil Kumar had handed over the possession of the shop to him and not to Gurmit Kaur. It is in evidence that Sunil Kumar was tenant under Gurmit Kaur and in case he had vacated the shop in question, then it has to be presumed that he had handed over the same to Gurmit Kaur, being landlord. Much stress has been laid on the statement of Sunil Kumar Ex.P8, which he had suffered before the appellate court during the proceedings of an appeal filed by the appellant, to contend that Sunil Kumar had handed over the vacant possession to appellant. From the perusal of said Ex.P8, there is nothing to suggest that Sunil Kumar had handed over the possession to the appellant. In his statement, he simply stated he had vacated the shop in question. Thus, no relief can be granted on the basis of the said statement of Sunil Kumar to the appellant, as there is nothing in the statement of Sunil Kumar that he had handed over the possession to appellant/defendant. Needless to observe that the respondent/plaintiff has filed simplicitor suit for the grant of permanent injunction and

in order to prove his possession, the respondent/plaintiff has relied upon the sale deed dated 19.1.2005. However, to resist the claim of the respondent/plaintiff, the appellant/defendant has set up a plea that in fact he is owner of the shop in question by way of inheritance on the basis of the Will executed by his father Parkash Singh. Admittedly, Gurmit Kaur from whom the respondent/plaintiff has purchased the shop in question vide registered sale deed, is the sister of appellant/defendant and undisputedly in an another litigation between the appellant/defendant and his sister Gurmit Kaur, the civil court has held that Will allegedly executed by Parkash Singh in favour of appellant/defendant is not genuine and accordingly, discarded the same. Since the Will set up by the appellant/plaintiff is held to be not genuine, as such the appellant/plaintiff cannot take any benefit from the alleged Will. Furthermore, the instant suit is for permanent injunction, as such the question of title is not to be decided in the present proceeding. Having independently considered the material available on record, this Court is also of the view that the respondent/plaintiff has successfully proved his case that he is in exclusive possession of the shop in question and the appellant/defendant has failed to establish his possession over the shop in question. Consequently, the findings of learned Trial Court are affirmed”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments passed by 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 a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the

RSA No. 1402 of 2017 (O&M)

Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. 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 present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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.

26.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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