

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

RSA No. 3769 of 2017 (O&M)

Date of decision: 27.09.2017

Mohd. Asif and others

...Appellants

versus

Ram Rattan and others

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA.

Present : Mr. J.S. Chandail, Advocate for the appellants.

RAJIV NARAIN RAINA, J. (ORAL)

1. The star argument advanced by the learned counsel for the unsuccessful appellants in the suit is that pleading a cause of action specifically in the formal paragraph of the plaint is mandatory, otherwise suit must inevitably fail by virtue of Order 7 Rule 1 of the CPC. The argument is misplaced when considered on the facts of the case.

2. The owner of the suit property filed suit for recovery of possession against the defendants-in-appeal in a situation akin to bringing a suit for possession after a quit notice is served on the defending party in possession of suit property. The defendants claimed to be tenants of the plaintiffs and to confirm this fact, the learned counsel for the appellants relies on the previous litigation filed by owner Lakhwinder Singh against his vendees, i.e., the plaintiffs in the suit, pleading that the sale deed executed between him and the vendees

was void and not binding on his rights since it was a result of fraud and mis-representation. In that suit he prayed for cancellation of the sale deed to which he was a party as vendor. That suit was filed on 16.03.2012 questioning the sale deed dated 17.08.2010 pertaining to the same shop in dispute in the present suit. The suit was withdrawn.

3. Learned counsel for the appellants says that the act of quietly withdrawing of the suit was also a fraudulent act because the counsel who filed the plaint was not the one who withdrew it. He makes much of the contents of paragraph No.5 of the suit by Lakhwinder Singh in which the latter admitted that after Mohd. Yusuf died his sons, namely, Mohd. Asif, Mohd. Arif and Mohd. Sahzad had stepped into the shoes of their father and continued to do the same business in the suit shop (tailoring business) and have been paying rent to the plaintiff at the rate of Rs. 500/- per month (including electricity charges) from which circumstance he contends that the appellants became tenants of Lakhwinder Singh.

4. It was the grievance of the appellants that Lakhwinder Singh had promised to sell the suit property/shop to the three brothers, sons of late Mohd. Yusuf but had allegedly broken the promise is a lament of no legal and actionable consequence. A promise which is not accepted is unenforceable in law unless it is transformed into contract. Lakhwinder Singh could always back out of the promise, if he made one, but not in writing, and retained his power to dispose of his

property by sale to his liking.

5. Even assuming that the appellants were tenants even then they would not have the right to retain possession over the suit property when they do not have the statutory protections afforded by the provisions of Rent Legislation. No doubt, the property fell outside the urban areas within the jurisdiction of the Haryana Urban (Control of Rent and Eviction) Act, 1973.

6. It is settled position in law that in case a quit notice under Section 106 of the Transfer of Property Act was not issued and served on the defendant, the suit itself is to be treated as a notice to quit and to such a suit there is no legal defence except want of service of notice of the suit, as the case may be. Upon filing of the suit, the defendants-appellants acquired the status of licencees and ceased to be tenants at will liable to pay mesne profits and not rent for use and occupation of the suit property till recovery of possession by the owner.

7. Moreover, when Lakhwinder Singh had not pursued his suit to its logical conclusion and has not made it a complaint on closure of suit by its withdrawal being the master of the *lis*, in any other superior Court or before the trial Court itself seeking to reopen the case for any reason stated by him, then the sale deed by Lakhwinder Singh to third party cannot be questioned by the defendants-appellants since they have no locus standi. It is not necessary in the suit of the present kind for plaintiff to make any special explanatory averments in the

formal 'cause of action' paragraph of the plaint. Such a person is not under any legal compulsion to disclose the reasons why he wants to regain possession of his property from the defendants.

8. If the paragraph in which learned counsel for the appellant rests his technical argument has been verified on legal advice then there is nothing wrong in the verification clause when it is based on cause of action on legal advice believed to be true. A person placed in the situation of Lakhwinder Singh while seeking legal advice would have been informed by any counsel of reasonable knowledge of the law that to recover possession of the suit property he should either issue a notice under Section 106 CPC to the defendant/s or to file a suit which would amount to a notice to quit. No input of 'personal knowledge' or disclosure as to when it arose to determine limitation was legally required of the plaintiff to be set up in this direction in the pleadings and he cannot be non-suited on this account. The right to recover possession by notice to quit is recurring within 12 years and can be obstructed only by adverse possession, in case set up by the defendant which is open, continuous and hostile to the right, title and interest of the true owner, which is not the case here nor could be.

9. I would, therefore, for the reasons mentioned above and those assigned in the judgment in appeal find no cogent reason or valid ground to interfere with the concurrent findings of the Courts below on both law and facts allowing the suit and would commend the

dismissal of the second appeal by the defendants in limine for want of substance and lack of merit.

10. The appeal is hereby dismissed.

(RAJIV NARAIN RAINA)
JUDGE

September 27, 2017

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Whether speaking/reasoned : Yes

Whether reportable : No