

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

113

RSA-4048-2012 (O & M)
Date of Decision:07.08.2018

Subhash Chand

...Appellant

Versus

Suresh Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S. Sihota, Senior Advocate with
Mr. B.R. Rana, Advocate
for the appellant.

Mr. B.R. Mahajan, Senior Advocate with
Mr. P.S. Jammu, Advocate and
Mr. Prateek Mahajan, Advocate
for respondents No.1 to 5.

ANIL KSHETARPAL, J.(Oral)

Defendant No.1 is in the regular second appeal against the judgment passed by the learned First Appellate Court.

Plaintiff filed a suit for possession by way of ejectment of defendant No.1 (tenant) from shop in question. It was further pleaded in the plaint that originally Shobha Ram was owner of three shops and this shop was owned by his sons Rup Chand and Suresh Kumar (plaintiff). It is further pleaded that these two brothers inducted the defendants as a tenant and tenancy of the defendants have been terminated by serving a notice dated 21.05.2004. Defendants contested the suit by pleaded that he is not the tenant over the shop in dispute but in fact this property is his ancestral property. It was further pleaded that the suit has been filed as a counter blast

to the suit filed by the defendants for permanent injunction.

Learned trial Court held that the defendant failed to prove that the shop is his ancestral. However, learned trial Court dismissed the suit on the ground that the plaintiff has also failed to prove his title.

In appeal, learned First Appellate Court relied upon two documents to hold that the property belongs to the plaintiff and his brother, i.e. Ex.P-2, which is copy of municipal record recording that the brother of the plaintiff is owner and the defendant-appellant is tenant over the shop in question and second document upon which the Court further relied upon is a copy of the sale deed dated 10.12.1946, which was executed between some other parties but this was with respect to property, which was situated on the northern side. It was specifically mentioned that the property on the southern side is of Gokul Chand Mahajan, grand-father of the plaintiff. On the basis of pre-ponderance of evidence, learned First Appellate Court decreed the suit.

This Court has heard learned senior counsels for the parties.

Learned Senior Counsel appearing for the appellant has admitted that the defendant-appellant could not lead any evidence to prove that it is his ancestral property. He submitted that he now wants to contest the case only on the basis of possessory title. Learned counsel has submitted that in view of Ex.D-1 to Ex.D-5 i.e. receipts of license fee paid to the Municipal Committee, this Court should record a finding that the defendant-appellant is having possessory title. On being pointed out learned counsel admitted that on the aforesaid receipts shop number has not been recorded. These receipts are with respect of license fee paid for a tea stall. These receipts have not been connected with the property in dispute.

Still further, Ex.DW-1/A is a layout plan produced by the

defendant-appellant of the property in the northern side of Nanu son of Mani Ram. Mani Ram is the person, who had purchased the property on 10.12.1946 in which there is a reference to the property on northern side belonging to Gokul Chand Mahajan, grand-father of the plaintiff.

Still further, Ex.DW-1/A also shows that ownership of the brother of the plaintiff has been admitted as it is mentioned as "refer to this"

“ Existing site plan of shop (hotel) of Sh. Rup Chand s/o Sh. Shobha Ram situated at Gehla Road Hathin Village Hathin Distt. Faridabad (Hry). ”

The defendant himself in the document produced admits that property belongs to plaintiff. Defendant after having in the beginning taken a stand that the property is ancestral and having failed to prove the same and now having failed to prove his possessory title, is entitled to any relief.

Hence, this Court does not find any good ground to interfere.

Regular second appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

07.08.2018

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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No