

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

(112)

RSA-4574-2016 (O&M)

Date of Decision: October 31, 2018.

Chander Singh

..Appellant

Versus

Upinder Gupta and another

..Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Jagjeet Beniwal, Advocate, for the appellant.

AMIT RAWAL, J. (ORAL)

CM-11862-C-2016

For the reasons stated in the application, delay of 03 days in filing the appeal is condoned.

RSA-4574-2016

Appellant-plaintiff has not been successful in seeking claim of mandatory injunction against the defendants for demolishing the alleged illegal construction of House No.3257, Sector 47-D, Chandigarh. It is averred that the plaintiff is allottee of Unit No.3257/1, Sector 47-D, Chandigarh (EWS Category) on hire-purchase basis from Chandigarh Housing Board. The Courtyard provided with the dwelling unit on the ground floor is to be used by the allottee only as a courtyard and for no other purpose, but the additional alterations caused were against the condition of the allotment letter.

Defendant No.1 contested the suit raising preliminary objections of non-joinder of the proper parties as answering defendant was not the owner of the groundfloor and fact of allotment of the unit to one Mrs. Usha Rani was not known to the answering defendant. It was averred that the plaintiff was habitual complainant and DDRs have also been lodged against him.

Noticing all these facts, the trial Court dismissed the suit on the premise that defendant No.1 was neither owner nor occupier of the suit property. The appeal preferred by plaintiff before the lower Appellate Court was also dismissed.

Learned counsel appearing on behalf of the appellant submitted that the defendant had converted the cycle area-cum-entrance into the kitchen which is against the terms and conditions of the allotment. Relief for injunction can always be sought against the person in occupation of the property. In fact, it was defendant No.1, who was owner of the property as Usha Rani has already sold the same.

I am afraid of the aforementioned arguments is not sustainable. It has been proved on record that Usha Rani was owner of the property which fact has been proved from the copy of allotment letter Ex. D-1, sale deed Ex.D-3 whereby Usha Rani had sold the dwelling home to Aarti Devi- wife of defendant No.1. Earlier suit against defendant No.2 was dismissed on account of non-service of notice under Section 67 of the Haryana Housing Board Act, 1971. While dismissing the suit in exercise of powers under Order 7 Rule 11 CPC vide order dated 15.05.2012, the Court had issued a direction to proceed in accordance with law.

For the reasons stated above, I do not find any merit in the submissions of the learned counsel for the appellant. There is no illegality or perversity in the judgments and decrees under challenge.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 31, 2018.
harsha

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