

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

**RSA No.1554 of 2018
Date of Decision.19.03.2018**

Balwinder Singh

.....Appellant

Vs

Gurmeet Kaur

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Shiv Charan Bhola, Advocate
for the appellant.

-:-

AMIT RAWAL J.(ORAL)

The appellant-plaintiff and defendant in the counter-claim is aggrieved of the judgment and decree rendered by the Courts below.

It would be in the fitness of things to give preface of the matter.

The appellant-Balwinder Singh preferred suit for permanent injunction restraining the defendants from interfering into the peaceful and lawful possession of the plaintiff over the house bearing MCK No.31C326U12 situated in Ward No.13 and 14 situated in DAV Colony Cheeka on the premise that he was in occupation of the same, for, he was allotted the aforementioned property by virtue of his employment and therefore, should not be dispossessed except in due course of law.

On receipt of notice of the aforementioned suit, the respondent-defendant appeared and filled written statement and also set up a counter claim saying that the ownership of the property was acquired by the defendant vide sale deed dated 01.07.2009 whereas the appellant was permitted to reside in the suit property on the asking of one Sajjan Singh, being brother of the father-in-law of the defendant-counter claimant. The

counter-claimant requested the plaintiff to hand over the possession of the

suit property but he refused.

The appellant-plaintiff filed reply to the counter claim by raising preliminary objection regarding maintainability, court fee and jurisdiction etc. On merits, it was stated that he was in possession of the house in dispute as tenant under the defendant for the last 4/5 years on payment of rent of ₹950/- per month and had paid the rent upto the month of July, 2014 but no receipt was issued and he was ready and willing to pay the future rent of the house in dispute from the month of August, 2014 but the defendant had no right to dispossess the plaintiff forcibly and illegally.

On the basis of pleadings, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to decree for permanent injunction as prayed for?*
- 2. Whether the plaintiff has no locus standi to file the present suit?*
- 3. Whether the suit of the plaintiff is time barred? OPD*
- 3(a) Whether the defendant/counter claimant is entitled to the decree for mandatory injunction as claimed in the counter claim? OPCC*
- 4. Relief.”*

In fact, the plaintiff did not appear in the court and the suit was dismissed in default on 17.02.2016 whereas the defendant/counter-claimant examined two witnesses and brought on record the following documents:-

“Ex.DA Attested copy of sale deed No.1166 dated 1.7.2009.

Ex.DB House tax receipt No.38 dated 10.12.2014.

Ex.DB/1 House tax receipt No.39 dated 10.12.2014.

Ex.DB/2 House tax receipt No.40 dated 10.12.2014.

Ex.DC Certified copy of house tax assessment register.

Ex.DD Attested copy of mutation No.2378.

The trial Court on the basis of aforementioned evidence dismissed the suit and allowed the counter-claim, which was upheld by the lower Appellate Court.

Mr. Shiv Charan Bhola, learned counsel appearing on behalf of the appellant-plaintiff submitted that the application for restoration of the suit was also dismissed and the same was challenged along with other grounds by taking up the aid of provisions of Order 43 Rule 1-A CPC but the fact of the matter is that the appellant-plaintiff had not been given appropriate opportunity to lead evidence in support of averments made in the appeal as well as in the written statement to the counter claim. No person should be condemned unheard, therefore, the judgment and decree of the Courts below are not sustainable in the eyes of law. Even no proper issues were framed. The findings are based on the misreading of the documentary evidence brought on record, thus, urges this Court remanding the matter to the trial Court for fresh adjudication of the lis.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Bhola, for, the appellant-plaintiff had not prima facie placed on record any rent receipt as contemplated under Order 13 Rule 1 CPC which is mandatory requirement of law that as and when the suit is filed, original documents are required to be placed on record. On the contrary, the defendant/counter claimant brought on record attested copy of sale deed, house tax receipts and copy of mutation. The status of the

plaintiff was of a licensee and therefore, mandatory injunction was sought not to dispossess him forcibly and illegally except in due course of law and such remedy had been initiated by the defendant for seeking possession by way of counter-claim.

In view of the aforementioned, the argument of Mr. Bhola has not been able to cut ice to form a different opinion than the one already arrived by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 19, 2018

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No