

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

-.-

RSA 2482 of 2018 (O&M)
Date of decision: 28.05.2018

Risal Singh

.....Appellant

Versus

Rajpati

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Sandeep Kumar Goyat, Advocate
for the appellant

-.-

Rekha Mittal, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for possession filed by the respondent/plaintiff was decreed by the trial Court and judgment and decree passed by the trial Court have been affirmed in appeal.

The plea of the respondent/plaintiff is that the appellant is in possession of house comprised in khewat No. 36 khatoni No. 115 khasra No. 172 constructed over 9½ marlas of land *i.e.* half share of land measuring 19 marlas, detailed in para 1 (unnumbered) of judgment of trial Court being tenant on rent at the rate of Rs.1,000.00 per month. She also prayed for recovery of rent for the period from 01.11.2011 to 01.10.2013.

Counsel for the appellant has three fold submissions to make. It is argued that earlier the entire land measuring 19 marlas was owned by one Biloj Kumar. On the basis of two sale deeds executed by Biloj Kumar on 14.05.2003, 9 ½ marlas each was sold to Rajpati and the

appellant/defendant vide sale deeds entered at serial No. 184 and 185. It is argued with vehemence that construction on the area in question was raised by the appellant but the respondent has wrongly claimed that construction of the property in question was raised by her and the same was rented out to the appellant at the rate of Rs.1000.00 per month. It is further argued that the respondent appeared in the witness box but even failed to disclose the name of Mason engaged for raising construction of the property but, on the contrary, the appellant has led sufficient evidence to prove that construction was raised by him.

Another submission made by counsel is that the respondent has filed suit for possession and recovery of rent by alleging the appellant to be tenant in the suit property. It is argued that for seeking eviction of the appellant, the respondent was required to file ejectment petition under the Rent Act.

The third submission made by counsel is that as 19 marlas of land was owned by Biloj Kumar from whom the parties purchased 9½ marlas land each, the respondent can seek possession of the property in question by taking recourse to appropriate remedy seeking partition. In addition, it is argued that the respondent has not produced on record any rent note/deed or rent receipt to establish her plea with regard to the appellant being a tenant in the property in question.

I have heard counsel for the appellant and perused the paper book particularly the judgment passed by the Court.

Before adverting to the submissions made by counsel, it is pertinent to recapitulate that in the regular second appeal, the Court cannot re-appreciate the evidence to record a finding different from what has been

consistently held by the Courts. The Courts on appreciation of evidence have upheld plea of the respondent/plaintiff that she has raised construction on the area purchased by her and is entitled to recover possession from the appellant who has been inducted as a tenant in the property in question. During the course of hearing, counsel for the appellant offered to deliver possession of remaining 9½ marlas along with one room constructed thereon out of 19 marlas in favour of the respondent in case she so agrees. This fact shows that the appellant is in possession of remaining 9½ marlas out of 19 marlas of land. In this view of the matter, contention raised by counsel for the appellant in this regard is not tenable.

So far as plea that the respondent can seek eviction by taking recourse to the proceedings under the Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short, 'the Act'), indisputably, the property is situated in revenue estate of Village Dangra, Tehsil Tohana, District Fatehabad. Counsel for the appellant would fairly inform that the suit land is not a part of urban property, therefore, provisions of the Act are not applicable to the property in question. That being so, contention raised by counsel is misconceived and liable to be rejected.

The plea of the appellant that the respondent is required to file a suit for partition and recovery of possession is also devoid of merit as the respondent after purchase of 9½ marlas of land raised construction of house with specific boundaries, therefore, she became owner of specific portion out of 19 marlas of land. The contention of the appellant that respondent has not been able to prove her case of creation of tenancy is also not meritorious as soon as his plea with regard to raising of construction of house in question stands negated. This apart, plea of the respondent with

regard to creation of tenancy has been corroborated by PW4, brother of the respondent/plaintiff. There is nothing abnormal and unnatural if tenancy was created in presence of brother of the respondent because ordinarily such like transaction are entered into in presence of closed acquaintances. In absence of any rent note being prepared or receipt being issued qua payment of rent, the respondent was not expected to manufacture document to support her cause with regard to creation of tenancy.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

28.05.2018
mohan bimbura

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