

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

RSA No.3013 of 2017 (O&M)

Date of decision:18.12.2018

Suresh Kumar

... Appellant

Vs.

Braham Parkash and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ajay Jain, Advocate
for the appellant in all the cases.

Mr. Ram Darshan Yadav, Advocate
for the respondents in all the cases.

AMIT RAWAL J.

C.M.No.10141-C of 2018 in RSA No.3018 of 2017

The application is allowed, subject to all just exceptions. Legal representative of appellant-Raghbar Dayal, as mentioned in the application is ordered to be brought on record for the purpose of prosecuting the present appeal.

Main Appeals

This order of mine shall dispose of seven Regular Second Appeals bearing Nos.3013, 3014, 3015, 3016, 3017, 3018 and 3031 of 2017 as the question of law and facts involved are identical. The facts are being taken from RSA No.3013 of 2017.

The present regular second appeals have been preferred at the instance of the appellant-defendants against the concurrent findings of facts

and law, whereby, suits filed by the respondent-plaintiffs for ejectment of the tenant from the demised premises, have been decreed by the trial Court and affirmed by the Lower Appellate Court.

The plaintiffs instituted the suit seeking ejectment of the appellant-defendant being tenant in respect of shops on the premise that vide sale deed dated 11.10.2004, he had become owner and since then defendant-tenant was a chronic defaulter and had not paid any rent. Legal notice dated 08.09.2009 was stated to be sent under Section 106 of Transfer of Property Act but avoided the service which resulted into another legal notice dated 23.10.2009.

The defendants opposed the suit by raising objections qua maintainability, locus standi and non-compliance of the provisions of Section 106 of Transfer of Property Act. It was alleged that shop in dispute and some other shops are the part of Dharamshala and names of the plaintiffs were illegally and wrongly recorded in the column of ownership and possession. In fact, Hari Singh, predecessor-in-interest of vendors of the plaintiffs was having only rights of manager and factum of defendants being tenant of the predecessor-in-interest of the vendors of the plaintiffs was not denied. It was alleged that defendants and other tenants have spent a lot of money to maintain Dharamshala. The certain part of Dharamshala was demolished.

Since the parties were at variance, the trial Court framed the following issues:-

“1. Whether the plaintiffs are entitled for a decree of

possession of the shop by ejecting the defendant from the same as prayed for?OPP

2. Whether the plaintiffs are entitled for a payment of arrears of rent amounting to Rs.14,400/- be awarded in their favour as prayed for?OPP

3. Whether the plaintiffs are entitled for a decree of payment of damages for use and occupation of demised shop at the rate of Rs.2,000/- per annum from 1.1.2009 as prayed for?OPP

4. Whether the suit of the plaintiffs is not maintainable in the present form?OPD

5. Whether the plaintiffs have no cause of action to file the present suit?OPD

6. Whether the plaintiffs have no locus standi to file the present suit?OPD

7. Whether the notice under Section 106 of T.P. Act is invalid and ineffective and not accordance with law?OPD

8. Whether the plaintiffs have concealed the material facts from the Court?OPD

9. Relief.”

The plaintiffs examined as many as 04 (four) witnesses and brought on record various documents, i.e. Ex.P1 to Ex.P4. On the other hand, defendants also examined 04 (four) witnesses and brought on record the documents, Ex.D1 to Ex.D8.

Mr. Ajay Jain, learned counsel appearing on behalf of the appellant(s) in support of the memorandum of appeal has raised the following submissions:-

- i) The plaintiffs were not owners of the demised premises nor there was any attornment by the defendants conferring the status of landlord, therefore, the suit for ejectment was not maintainable.
- ii) The dispute regarding ownership and title of Dharamshala is already pending adjudication and in the absence of the same, the suit was liable to be stayed.
- iii) The rent of demised shop and other shops was always used for the maintenance of Dharamshala. The predecessor-in-interest of vendor had only right of maintenance and by taking the advantage of wrong entry, filed the ejectment petition.
- iv) The sale deed had not seen the light of day, thus, in such circumstances, the suit was liable to be dismissed.
- vi) The boundaries of the demised shop as depicted in the site plan did not tally and thus, urged this Court for setting aside the findings under challenge as there is gross illegality and perversity.

Per contra, Mr. Ram Darshan Yadav, learned counsel appearing on behalf of the respondents-plaintiffs supported the concurrent findings of facts and law and submitted that judgments and decrees of the Courts below are based upon the appreciation of oral and documentary evidence. The land

underneath Dharamshala was *gair mumkin*. The appellant-defendants, as per the provisions of Section 116 of Indian Evidence Act, are estopped to challenge the title of the property in the proceedings for ejectment. There is contrast between the definition of 'owner' and 'landlord'. It is not necessary that landlord has to be owner, thus, pendency of the litigation with regard to ownership has no bearing in adjudication of the lis, thus, urged this Court for dismissal of the appeals.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Jain, for, the defendants have not denied their status as tenants. On the other hand, on perusal of sale deed dated 11.10.2004, plaintiffs became the owners of the shop in dispute. The defendants did not disclose name of the predecessor-in-interest of the vendors of the plaintiffs. In such circumstances, they cannot be permitted to take the plea of relationship of landlord and tenant.

It is a matter of record that the appellant-defendants are in possession of the suit property after the purchase in the year 2004. The legal notices dated 08.09.2009 and 23.10.2009 have been proved on record as Ex.PW2/1 and Ex.PW2/2. The appellants did not deny that Naresh, plaintiff no.5 was not owner of the shop in dispute, nor paid the rent as claimed but as per the provisions of Order 15 Rule 5 CPC, tendered the rent. The findings of facts and law allowing the suit, in my view, cannot be said to be suffering from illegality and perversity.

No ground for interference is made out.

The appeals are dismissed.

(AMIT RAWAL)
JUDGE

December 18, 2018
savita

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