

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

RSA No. 461 of 2019 (O&M)

Date of decision : January 18, 2019

Hans Raj

.....Appellant

Versus

Kiran Anand and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sanjeev Sharma, Advocate
for the appellant.

LISA GILL, J.

Appellant – plaintiff is aggrieved of judgement and decree dated 26.05.2017 passed by the learned Civil Judge (Senior Division), Rohtak as well as judgment and decree dated 17.11.2018 passed by the learned Additional District Judge, Rohtak whereby suit seeking permanent injunction against the respondent – defendants to the effect that they be restrained from interfering in his peaceful possession of the shop-cum-house as detailed in the plaint and dispossessing him thereof was dismissed.

At the outset, it is to be noted that respondent - defendant No. 1 is plaintiff-appellant's sister in law (*Bhabī*) i.e. wife of the plaintiff's brother namely Vinod Anand and respondent - defendant No. 2 is the plaintiff's niece i.e. daughter of his brother Vinod Anand. It was pleaded by the plaintiff that his mother Krishna Wanti was the owner in possession of the suit property. Krishna Wanti passed away without executing any Will. She had three sons i.e. the plaintiff besides Vinod Anand and Suraj Anand. Vinod Anand and Suraj Anand had since passed away. Therefore, the plaintiff, it was pleaded, alongwith the defendants who were the legal heirs

of deceased Vinod Anand besides legal heirs of Suraj Anand were the owners in possession of the suit property to the extent of 1/3rd share each. Water connection on the premises was stated to be installed in his name. Electricity connection was registered under the name of the plaintiff's father, but the house tax assessment was illegally entered in the name of the defendants in the records of the Municipal Corporation, Rohtak. It was pleaded that after the death of Vinod Anand, the plaintiff supported the family of the defendant. Plaintiff's nephew namely Sourabh son of Vinod Anand (son and brother respectively of defendants No. 1 and 2), was suffering from a serious disease. Huge amount of money was spent by the plaintiff on the treatment of his nephew but he did not survive. Plaintiff, it was stated, had a separate house and shop in New Sabzi Mandi, Rohtak where he was residing and he had authorised the defendants to live in the property in dispute. However, due to heavy losses in business and amount spent on the treatment of son of defendant No. 1, plaintiff went bankrupt and he had to leave Rohtak alongwith his family due to the fear and threat of debtors. Six months prior to the filing of the suit, the plaintiff alongwith his family came back to Rohtak and started living in the house i.e. the property in dispute but this was not to the liking of the defendants, who threatened the plaintiff and his family members to vacate the house otherwise they would be involved in false criminal cases. It was further pleaded that a month prior, the defendants gave severe beatings to the plaintiff's daughter-in-law and grand daughter. With the intervention of police, the matter was reconciled but the act was repeated again. The defendants on 04.02.2015 called some outsiders and tried to dispossess the plaintiff forcibly but could not succeed due to intervention of neighbours. A false application was

moved against the plaintiff to the Women Cell, Rohtak. Despite requests, defendants did not desist from the illegal acts. Therefore, the suit was filed.

The suit was resisted by the respondents. Various preliminary objections were taken in the written statement. Averments on merits were controverted. It was stated that Krishna Wanti, mother-in-law of defendant No. 1 and mother of the plaintiff had passed away on 19.12.1996. She had executed a Will dated 18.10.1994 in favour of the defendant – Smt. Kiran Anand and Sourabh son of Vinod Anand. She willingly gave her shop-cum-house i.e. the property in question consisting of the shop on the ground floor and residential house on the first floor to the defendants in the presence of the plaintiff and Suraj Kumar i.e. the other brother of the plaintiff. Sourabh son of defendant No. 1 passed away on 16.03.2013 and the defendants became the owners in possession of the property in dispute. It was denied that the plaintiff had ever supported the defendants' family or that any money had been spent by the plaintiff on the illness of Sourabh. It was stated that the plaintiff resided in a separate house and had a separate shop in New Sabzi Mandi, Rohtak. It was further stated that family of the parties were allotted three shops in New Subzi Mandi on the eve of shifting of Subzi Mandi (Grain Market) to a new place. Plaintiff was allotted shop No. 9-B and he was the owner of another shop No. 9-A. Suraj and his sons also had a shop No. 34 in the new subzi mandi. The plaintiff was also given a house in front of the defendant's house where the whole family of the plaintiff used to live. This house was sold by the plaintiff. There was, thus, no question of authorising the defendants to live in the property in dispute by the plaintiff as the property belonged to the defendants. A loan was taken by the plaintiff in the name of defendant No. 2 for purchasing a car but he

was not making payment. Plaintiff give an undertaking in the office of Senior Superintendent of Police, Rohtak that he would re-pay the amount of loan. Averments in the pleadings were controverted. Dismissal of the suit was prayed for.

Replication was not filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the plaintiff is entitled to a decree for permanent injunction, as prayed for?OPP.
- ii) Whether the suit of the plaintiff is not maintainable in the present form?OPP
- iii) Whether the defendants are entitled to relief of counter claim, as prayed for? OPD.
- iv) Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record, facts and circumstances of the case concluded that the plaintiff had failed to prove his case. Plaintiff could not prove that he was the owner of property in dispute or that he was in possession thereof. Suit filed by the plaintiff was, accordingly, dismissed. Appeal filed by the present appellant - plaintiff was also dismissed by the learned Additional District Judge, Rohtak vide judgment dated 17.11.2018. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned courts below have grossly erred in dismissing the suit filed by the appellant – plaintiff. It is submitted that the plaintiff is the co-sharer of the property in dispute to the extent of one third (1/3rd). Moreover possession of the plaintiff over the suit property has been duly proved. The

water bill (Ex.PX) and the electricity bill (Ex.PY) prove the possession of the plaintiff over the suit property. Application (Ex.P2) given to the police in respect to the problem which was created by the defendants also proves possession of the plaintiff over the suit property. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 26.05.2017 passed by the learned Civil Judge (Senior Division), Rohtak as well as judgment and decree dated 17.11.2018 passed by the learned Additional District Judge, Rohtak be set aside and suit filed by the plaintiff - appellant be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file.

Case set up by the plaintiff is that the plaintiff is the owner of the property in question to the extent of one third share. Krishna Wanti - mother of the plaintiff was stated to be the original owner of the suit property and after her death plaintiff alongwith his brothers/legal heirs succeeded to the said property to the extent of one third share each. Krishna Wanti being the original owner of the property is not in dispute. The defendant – respondents, on the other hand, have claimed ownership and possession of the suit property on the basis of Will dated 18.10.1994 (Ex.D3) executed by Krishna Wanti. At this juncture, it is relevant to note that the plaintiff has testified as PW1. In his cross examination, the plaintiff (PW1) admitted that he alongwith his family members had left Rohtak when the plaintiff became bankrupt. They left Rohtak due to fear and threat of the debtors. It was only about six months prior to the filing of the suit that the plaintiff came back to Rohtak alongwith his family and started living in the house in question but the defendants were not ready to accept the

unexpected guests. It is admitted by PW1 that when a criminal case was registered against him he was residing in Vikas Nagar. At the time of solemnisation of marriage of his son in 1998, he alongwith his family members used to reside in Subhash Nagar.

PW1 in his cross examination has further accepted that Will (Ex.D3) was duly executed by his mother in favour of the respondent – defendants. As per the Will (Ex.D3), ownership as well as possession of the suit property was given to the respondent – defendants by the plaintiff's mother. It is rightly observed by both the learned courts below that the plaintiff – appellant has not disputed the execution of Will (Ex.D3). Learned counsel for the appellant is unable to point any evidence on record which indicates possession of the plaintiff over the suit property. Mere reliance upon the water and electricity bills (Exs.PX and PY) are not sufficient to prove the case of the plaintiff. It is pertinent to note that the said water and electricity bill do not bear any house number. It is not proved that the said bills pertain to the property in dispute. Learned courts below have rightly held that a mere casual stay for a while in the property in dispute cannot be termed to be conclusive possession of the plaintiff over the same. Furthermore, there is indeed no evidence on record to prove that the plaintiff had never supported the defendants or their family in any manner or spent any money on the treatment of Sourabh i.e. son of defendant No. 1. Similarly, the purported application to the police is not proved on record. It is rightly held by the learned trial Court that the plaintiff has not approached the Court with clean hands.

Both the learned courts below have rendered well reasoned and logical judgements against the appellant on the basis of proper appreciation

of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 26.05.2017 passed by the learned Civil Judge (Senior Division), Rohtak as well as judgment and decree dated 17.11.2018 passed by the learned Additional District Judge, Rohtak which calls for any interference by this Court in second appeal.

Accordingly, this appeal is dismissed with no order as to costs.

January 18, 2019
rts

(Lisa Gill)
Judge

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