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

**RSA-2201-1986 (O&M)
Date of decision : 25.01.2019**

Devat Ram and others

... Appellants

Versus

Ajit Kumar (deceased) through LR's and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashwani Gaur, Advocate
for the appellants.

Mr. Mani Ram Verma, Advocate
for the LR's of respondent No.1 (Except 1(iii)).

Mr. Parveen Saini, Advocate
for the applicant.

AMIT RAWAL, J. (ORAL)

CM-13193-C-2016

Prayer in the application under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, is for deletion of the name of the respondent Nos.5 to 9 from the array of the parties to the instant appeal.

For the reasons stated in the application, the names of respondent Nos.5 to 9 are ordered to be deleted from the array of the parties.

CM stands disposed of.

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The present regular second appeal, at the instance of the appellants-defendant Nos.1 & 2, is directed against the concurrent findings

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of fact, whereby the suit of the respondents-plaintiffs for partition of the shop, in question, has been decreed by the trial Court while passing a preliminary decree and affirmed in appeal.

The respondents-plaintiffs filed the suit alleging that Moti Ram deceased, predecessor-in-interest of the plaintiffs and proforma defendant Nos.5 to 6, was owner in possession of Chabutra situated in Main Bazar, Jind, bounded as East: 8' Mandir; West : 8' Gali; North : 3'-4' Bazar; and South: 6'-8' Property of Mam Raj etc. After death of Moti Ram, it was inherited by plaintiff Nos.1 to 5 and defendant Nos.5 & 6, being children and widow. In the year 1967, a double storey shop as mentioned in the head-note of the plaint, was constructed on the site of Chabutra and on the property, in its South belonging to defendant No.1, by joint funds in the ratio 50:50 i.e. by plaintiff No.1 and defendant No.1, thus, both the parties became co-owners in equal sharer. Defendant No.1 admitted the fact in the rent note dated 13.06.1969 executed by one Mohinder Singh s/o Pirthi Singh. Mohinder Singh continued to pay rent to plaintiff No.1 and defendant No.1 upto 14.05.1971 when he vacated the shop. The first floor of the shop was in possession of defendant No.4 and ground floor in favour of defendant No.3 as tenant. It was acquired that defendant No.1 had executed a sale deed dated 09.12.1977 in favour of defendant No.2. Earlier suit was filed, which was withdrawn with liberty to file afresh.

Defendant No.1 opposed the suit by raising preliminary objection qua maintainability of the suit and denied the plaintiffs to be in possession of the shop as well as the relief of cancellation of the sale deed. On merits, para No.1 of the plaint was specifically denied and it was stated that Moti Ram was never owner in possession of Chabutra. In Para 3, it was

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explained that there was no jointness of the construction of the shop by joint funds. In fact, defendant No.1 had purchased the land adjoining to the said Chabutra and constructed building on that land, in the year 1963 by own funds and since then, Devat Ram/defendant No.1 alone was in possession of Chabutra and prior to above-mentioned construction, the Chabutra and the adjoining land, was stated to be in possession of Mam Raj, as owner.

Defendant No.2 filed the separate written statement and opposed the suit and denied that Moti Ram was never owner in possession of Chabutra.

Replication was filed, wherein the entire averments of the written statement were denied and that of the plaint were reiterated.

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

- 1. Whether Moti Ram deceased, predecessor-in-interest of plaintiffs and proforma defendants No.5 to 6, was owner in possession in Chabutra as mentioned in the para No.1 of the plaint? OPP*
- 2. Whether the plaintiff No.1 constructed a shop in dispute on Chabutra and property on its south with defendant No.1 on behalf of plaintiffs and proforma defendants No.5 and 6 in the year 1971 as alleged in para No.3 of the plaint? OPD*
- 3. Whether the plaintiffs and proforma defendants are owners and in possession of ½ share of suit property? OPP*
- 4. Whether the sale deed No.1694 dated 9.12.1977 is against fact and law and without right and authority and ineffective on the right of plaintiffs and proforma defendants? OPP*
- 5. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD*
- 6. Whether the plaintiff No.1 is estopped from filing the present suit as alleged in para No.1 of the preliminary objection of*

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w/s of defendant No.2 ? OPD

6-A Whether the suit is time barred? OPD

7. Whether the suit is vague and indefinite? OPD

8. Whether the defendants are entitled to special costs, if so to what effect? OPD

9. Whether this Court has no jurisdiction to give the relief against the defendants No.3 and 4? OPD

10.Relief.

The plaintiffs in support of the aforementioned pleadings brought on record the various documents (Ex.P1 to Ex.P6), whereas the defendants tendered in evidence Ex.D1 to Ex.D39.

On the basis of the evidence both oral and documentary, the trial Court decreed the suit by passing preliminary decree. The appeal taken by appellants-defendant Nos.1 & 2, before the lower Appellate Court was also dismissed.

Learned counsel for the appellants-defendant Nos.1 & 2 submitted that the concurrent findings of fact arrived at by both the Courts below are wholly preposterous, fallacious and perverse, for, the plaintiffs miserably failed to discharge the onus by proving on record the jointness, much less, joint ownership being co-sharer of the suit property. No document of title has been brought on record except rent note. Rent note is not exclusive piece of evidence conferring the title. The finding that the appellants-defendant Nos.1 to 4 did not deny the ownership of joint owners is wholly erroneous in view of the categoric pleadings in the written statement. Rent note does not confer the ownership as there is a stark difference between the landlord and the owner, thus, urges this Court for setting aside the concurrent findings of fact, under challenge.

Learned counsel for the respondents-plaintiffs supported the

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concurrent findings of fact by saying that there is no illegality and perversity. Devat Ram/defendant No.1, in cross-examination, admitted that he along with the plaintiffs had no other property in joint, which leads to an irresistible conclusion that the suit property was joint. Tenant had been paying rent jointly to Devat Ram/defendant No.1 and plaintiff No.1, being a clincher to establish the jointness. Rent receipts (Ex.D-13) are also to the testimony to the same, thus, urges this Court for dismissal of the present regular second appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that the following substantial questions of law arise for determination of this Court:-

- 1. Whether the judgments and decrees of the Courts below in passing the preliminary decree, in the absence of any document of title, are perverse in the law or not?*
- 2. Whether the rent note and receipts can be treated as document of title?*

It is a settled law that for the purpose of collecting the rent, the landlord may not be owner.

In order to determine the controversy, I would be failing in my duty in not extracting the specific pleadings in the plaint and the relevant para of written statement. Para Nos.1 & 3 of the plaint and that of the written statement read as under:-

"Para Nos.1 & 3 of the plaint:

- 1. That Sh. Moti Ram deceased predecessor-in-interest of plaintiffs and proforma defendants No.5 to 6 was owner in possession of Chabutra situated in Main Bazar, Jind.*

East: 8' Mandir;

West : 8' Gali;

North : 3'-4' Bazar;

South: 6'-8' Property of Mam Raj etc.

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3. That in 1967 a double storeyed shop mentioned in the head-note of the plaint was constructed on the site of Chabutra mentioned above and on the property in its sought belonging to defendant No.1 by joint funds in the ratio of 50:50 by defendant No.1 and plaintiff No.1 (on behalf of plaintiffs and proforma defendant). In this way, the plaintiffs and proforma defendant Nos.5 to 6 and the defendant No.1 become the owner in possession of the shop in dispute in equal shares. The defendant No.1 has admitted this fact in the rent note dt. 13.6.1969 executed by one Mahinder Singh s/o Pirthi Singh r/o Jind. In that rent note the northern portion of the shop bounded as under was admitted to be owner by the plaintiff No.1 and the remaining portion to be owned by defendant No.2.

East: 8' Mandir;

West : 8'-4" Gali;

North : 7'-4' Road Bazar

*South: 6'-8' Property of defendant
No.1.*

Para Nos.1 & 3 of the written statement:

1. That para No.1 of the plaint is wrong and denied. Moti Ram was never owner and in possession of the Chabutra mentioned para No.1 of the plaint.

3. That para No.3 of the plaint is wrong and denied it is quit wrong that the building on Chabutra and of the joining land was constructed by joint funds of Sh. Moti Ram and defendant No.1. The real fact is that defendant No.1 having purchased the land adjoining to the said Chabutra constructed building on it and on the land of said chabutra in the year 1963 by his own funds. Since then, Devat Ram defendant No.1 alone was in possession of the said Chabutra. Rest of the para is also wrong and denied. Prior to the above construction, the chabutra and the adjoining land was in possession of Mam Ram as owner."

On juxtaposition of the aforementioned paragraphs, there is a specific denial that the shop was constructed by joint funds of Moti Ram

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and defendant No.1. The Courts below, in my view, abdicated in not reading the contents of the written statement in correct perspective. It is not a vague denial to form an opinion as per the provisions of Rule 5 of Order 8 of the Code of Civil Procedure. The plaintiffs, in my view, miserably failed to place on record the document of title, for, in a suit for partition claiming joint possession or separate possession, title as well as jointness has to be proved. No account books have been placed on record to establish that the shop was constructed by joint funds. In my view, onus remained un-discharged and therefore, question of rebuttal did not arise.

It is an intriguing case, where the Courts below by noticing the passing reference of the rent note executed by plaintiff No.1 and defendant No.1, treated as a document of title. There cannot be any implied admission of title.

In view of what has been noticed above, the substantial questions of law, as noticed above, are answered in favour of the appellants-defendants and against the respondents-plaintiffs. The judgments and decrees of the Courts below are set aside and the suit of the respondents-plaintiffs is, accordingly, dismissed.

Resultantly, the present regular second appeal is allowed.

25.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**