

RSA No.2379 of 2019 (O&M)

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

RSA No.2379 of 2019 (O&M)

Date of decision: 27.11.2019

Suresh Kumar

.....Appellant

versus

Kewal Ram Jain and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Jai Bhagwan, Advocate, for the appellant.

RAMENDRA JAIN, J. (ORAL)

Unsuccessful defendant has filed this Regular Second Appeal against judgment and decree of the lower appellate Court dated 10.10.2018, affirming judgment and decree of the trial Court dated 15.03.2016, whereby suit of the respondents-plaintiff for declaration, possession, mesne profits and permanent injunction against the appellant, was decreed in toto.

Briefly, appellant claiming himself to be tenant over the suit property measuring 80 square yards situated within the lal dora of Village Jharsa, Tehsil and District Gurgaon, filed a civil suit for permanent and mandatory injunction against the respondents, which was decreed vide judgment and decree dated 03.09.2012 with the observation that respondents shall not be entitled to evict the appellant except in due course of law. Said judgment and decree attained finality being not challenged further by the respondents by way of appeal or otherwise. Immediately thereafter, respondents claiming themselves to be joint owners of the suit property, in dilapidated condition, filed a suit against the appellant for

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declaration, possession, mesne profits and permanent injunction.

Trial Court, after due notice to the appellant and holding full-fledged trial, affording effective opportunities to both the sides to lead evidence to their satisfaction, decreed the suit vide judgment and decree dated 15.03.2016, thereby directing the appellant to hand over vacant possession of the suit property within a period of 60 days.

Being aggrieved, appellant approached the lower appellate Court, but remained unsuccessful as his appeal was dismissed vide judgment and decree dated 10.10.2018.

Learned counsel for the appellant *inter alia* contends that both the Courts below failed to appreciate that appellant through his father was a settled-tenant in the suit property. He was not a licensee under the respondents-plaintiff as has been illegally held by the Courts below. The respondents-plaintiff could not prove their status of joint ownership over the suit property. Thus, their suit was liable to be dismissed outrightly. Respondents-plaintiff instead of filing suit for possession in civil Court were required to file eviction petition before the Rent Controller inasmuch as *inter se* relationship between the parties, as discussed above, was of tenant and landlord.

Having given thoughtful consideration to the above submissions, this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

No question of law much less substantial has been raised in this appeal. Hence, same is held not maintainable.

Respondents-plaintiff were not required to prove their

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ownership qua suit property inasmuch as appellant himself in his written statement categorically admitted them as owners. Thus, an admitted fact was not required to be proved.

Admittedly, appellant has no rent receipt, lease agreement or any other document with him to prove his tenancy over the suit property through his father. Thus, in the absence of any such documentary evidence, both the Courts below have rightly declared the appellant in permissive possession as a licensee in the suit property.

The Appellate Court has validly rejected the application of the appellant for additional evidence for production of cheques and postal orders inasmuch as appellant could not prove that any of the cheque or postal order was ever encashed by the respondents-plaintiff as rent.

It is needless to mention here that holder of a bank account has always a cheque book of his account in his possession. Thus, production of some cheques of his own account by the appellant in the name of respondents without their refusal or corroborative evidence was only a futile exercise not going to favour the appellant in any manner.

I have gone through judgments of both the Courts below and find no illegality or perversity in the same being based on appreciation of evidence.

Dismissed.

(Ramendra Jain)
Judge

November 27, 2019
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No