

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

RSA-2813-1999 (O&M)

Date of decision: 01.10.2019

Chandgi Ram

...Appellant

Versus

M/s Bharat Steel Traders, Sirsa and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Ms. Bhupinder Kaur, Advocate for
Mr. Suman Jain, Advocate for the appellant.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Chandgi Ram son of Kishori Lal, resident of Sirsa had brought a suit for recovery of Rs.84924/- i.e. Rs.75600/- as principal amount and Rs.9324/- as interest thereon on account of compensation for the use and occupation of shop bearing House tax No.114 situated at Circular Road, outside Roro Gate, Sirsa against defendants M/s Bharat Steel Traders, Sirsa and Sh. Om Parkash, Brij Lal sons of Ram Niwas, Jugal Kishore son of Ram Gopal and Smt. Dayawanti wife of Ram Gopal, all residents of Sirsa. As per version of the plaintiff, Municipal Committee, Sirsa had auctioned plot No.12 measuring 20 feet x 62 ½ feet in the name of Rama Nand son of Bihari Lal, resident of Sirsa.

In the plaint, the plaintiff has given a pedigree table. For better understanding of relationship inter se the parties, the same is

described as follows:-

Bihari Lal									
Rama Nand					Kishori Lal				
Om Pr.	Ved Pr.	Vijay Kr.	Shakuntla	Kanta	Ram Murti	Darshana	Savitri	Kamlesh	Saroj
							Usha	Barfho Devi	(Wd/o)
				Chandgi Ram (son)		Radhe y Sham (son)			Dayawanti
				Subhash (son)					

The pedigree table of the family of defendant No.1 is as under:-

Bhura Mal	
Ram Niwas	Ram Gopal
Brij Lal (son)	Om Parkash (son)
	(husband of Dayawanti d/o Kishori Lal
	Jugal Kishore (son)

According to the plaintiff, Sh. Rama Nand expired in March, 1977. An oral family settlement had taken place in the year 1976 in terms of which, the plaintiff became owner of the plot in dispute and he had raised construction of shop thereon in the year 1977 after the death of Rama Nand. The plaintiff had filed a civil suit for declaration regarding the shop in dispute on the basis of family settlement against Om Parkash, Ved Parkash and Vijay Kumar sons of Rama Nand and that civil suit bearing No.47 of 1982 was decreed in favour of the plaintiff on 11.06.1982 by Sub Judge, 1st Class, Sirsa. That although, Sh. Rama Nand paid auction money to the Municipal Committee, Sirsa yet he did not

acquire the ownership of the plot in dispute and no sale deed was ever executed in his favour during his life time. Legal heirs of Sh. Rama Nand had also not acquired any right over the plot in dispute. Municipal Committee, Sirsa sold the above plot to the plaintiff by means of a sale deed dated 26.12.1984 registered in the office of Sub Registrar, Sirsa on 02.04.1985. That firm M/s Bharat Steel Traders, Sirsa came into being on 26.09.1977 comprising of following partners from 26.09.1977 to 31.08.1979:-

1. Sh. Ram Niwas son of Sh. Bhura Mal.
2. Sh. Om Parkash son of Sh. Ram Niwas.
3. Smt. Daya Wanti wife of Sh. Ram Gopal.
4. Sh. Radhey Shayam son of Sh. Kishori Lal.
5. Sh. Subhash Chander son of Sh. Chandgi Ram plaintiff.

Sh. Radhey Shyam and Subhash Chander, partners in the firm are brother and son respectively of the plaintiff, whereas, Dayawanti is his sister. The plaintiff had given the shop in question to defendant No.1 as licensee for use and occupation, however w.e.f. 01.09.1979, a new firm under the name and style of M/s Bharat Steel Traders, Sirsa was constituted with defendants No.2 to 5 as partners. Defendant No.1 is carrying on its business in the shop in dispute without the consent of the plaintiff. Defendant Nos.1 to 5 are occupying the shop against the wishes and consent of plaintiff and their possession is illegal and as trespassers. In that way, the plaintiff is entitled to recover the compensation for use and occupation of the shop @ Rs.2100/- per month i.e. Rs.25200/- p.a. w.e.f. 01.09.1979. That the plaintiff is entitled to recover Rs. 75600/- as

compensation for use and occupation of the shop in dispute from defendants No.1 to 5 w.e.f. 01.10.1986 upto date besides interest of Rs.9324/-. According to the plaintiff, he asked defendants No.1 to 5 to pay the said amount to him but they put off the matter on one pretext or the other and ultimately, refused to do so, giving rise to a cause of action to the plaintiff to bring the suit.

On notice, only defendants No.1 to 3 appeared and offered a contest by way of filing a joint written statement, whereas, defendant Nos.4 & 5 did not appear despite service and as such, were proceeded against ex parte. In the joint written statement submitted by answering defendants, they contended that the plot in dispute was initially owned by Municipal Committee, Sirsa, which had been purchased in auction by Sh. Rama Nand son of Bihari Lal, resident of Sirsa and then his son Ved Parkash had constructed a shop on the same, leasing it out to defendant No.1 on yearly rent of Rs.1500/-. That Sh. Ved Parkash for himself and acting on behalf of other legal heirs of Rama Nand-deceased had entered into an agreement to sell the shop in dispute with defendant No.1 for a consideration of Rs.80,000/- on 02.08.1979 and had received a sum of Rs.60,000/- as earnest money. Sh. Ved Parkash had agreed to get the sale deed executed and registered in favour of defendant No.1 after getting the sale deed registered in his favour from Municipal Committee, Sirsa. The shop in dispute was leased out to defendant No.1 on 26.09.1977 on yearly rent of Rs.1500/-. Ved Parkash and others legal heirs went back on their agreement for sale dated 02.08.1979 and then a civil suit for ownership

and possession by specific performance of the agreement to sell was filed by defendant No.1 against Ved Parkash and others. The matter is now pending before Appellate Court Sirsa. The answering defendants denied that the shop in dispute fell to plaintiff in any family settlement or that he became owner thereof. According to such defendants, Ved Parkash and other LRs of Sh. Rama Nand colluded with the plaintiff and in order to frustrate the agreement for sale dated 02.08.1979 got a decree passed conferring ownership on the plaintiff in respect of the shop in dispute but that has little effect on the rights of defendant No.1, both as a tenant as well as that of a purchaser. Ved Parkash continued to receive rent from defendant No.1 in respect of the shop in dispute and he has been showing the receipt of rent in his accounts submitted to the Income Tax Department. The shop in dispute was never given to defendant No.1 as a licensee as alleged. According to the answering defendants, the plaintiff is entitled to receive rent @ Rs.1500/- per month for the period within three years from the date of institution of suit subject to the final decision in the suit for ownership by way of specific performance of agreement to sell dated 02.08.1979. In the end, such defendants prayed for dismissal of the suit.

The plaintiff filed replication, controverting the allegations in the written statement, whereas, reiterating the averments in the plaint.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is owner of the dispute property as alleged? OPP

2. Whether the plaintiff is entitled to recover the disputed amount of Rs.84924/- as compensation for use and occupation of the disputed property? OPP.
3. Whether the defendants are in possession of the disputed property as tenants as alleged? OPD
4. Relief.

Parties were afforded adequate opportunities to lead evidence in support of their respective claims. During the course of evidence of the plaintiff, he himself appeared in the witness box as PW1, whereas, on behalf of the defendants, Om Parkash appeared as DW1.

After hearing arguments, the trial Court of Addl. Civil Judge (Sr. Divn.) Sirsa decided issues No.1 to 3 in favour of defendants and against the plaintiff. As a collective effect of findings on the issues, the trial Court had dismissed the suit with costs, vide judgment and decree dated 26.08.1996.

Feeling aggrieved by the said judgment and decree, the plaintiff had preferred an appeal before Addl. District Judge, Sirsa but he was unsuccessful there also and vide judgment and decree dated 30.01.1999, the impugned judgment and decree passed by the trial Court were affirmed and the appeal filed by the plaintiff was dismissed.

Still feeling dissatisfied, the plaintiff has approached this Court, by way of filing a Regular Second Appeal, notice of which was given to the respondents, however, there is no representation on their behalf.

I have heard learned counsel for the appellant besides going

through the record.

The trial Court on appreciation of evidence brought on file by the parties, in the light of factual and legal position, had rejected the claim of the plaintiff. It has been observed that though the plaintiff claimed himself to be owner of the shop in dispute on the basis of decree in civil suit No.47 of 1982 dated 11.06.1982 passed by Sub Judge, 1st Class, Sirsa, however, no such decree was placed on file by the plaintiff. The omission to place on file such an important document gave a severe jolt to the case of the plaintiff. Furthermore, there was solitary statement of plaintiff himself appearing as PW1 which was not found to be sufficient to prove ownership of the plaintiff over the shop in dispute. The trial Court has further noticed that in para No.37 of the judgment in civil suit No.815 of 1985 decided on 20.02.1990 titled as M/s Bharat Steel Traders, Sirsa (Haryana) Vs. Ved Parkash and others (Ex.P1) wherein it has been held that Chandgi Ram (present plaintiff) validly became owner of the plot by virtue of family settlement and all the legal heirs of Rama Nand deceased voluntarily suffered the consent decree in his favour, which was binding on their rights and M/s Bharat Steel Traders, Sirsa never acquired any interest in the plot in question. However, the Appellate Court in its judgment Ex.D1 has observed in para No.13 that it was Ved Parkash who had constructed the shop in dispute and inducted defendant No.1 to be tenant in the said shop. As such, the plaintiff could not be taken to be owner/landlord of the shop in dispute, therefore, not entitled to recover any amount from the defendants for use and

occupation of the property. The trial Court on the basis of judgment Ex.D1 concluded that defendant No.1 is in possession of the suit property as tenant under Ved Parkash and Ved Parkash had been receiving rent from defendant No.1.

Learned Court of Addl. District Judge, Sirsa agreed with the findings recorded by the trial Court, further adding that the plaintiff/appellant had taken up absolutely contrary stand in the plaint to explain his manner of acquisition of title. While on one hand, he claimed to have obtained disputed plot in a family settlement which was validated by the Civil Court decree and on the other hand, he averred in the plaint that Municipal Committee sold that plot to him, vide sale deed dated 26.12.1984, registered on 02.04.1985 and such inconsistency is apparent enough in the circumstances of the case and the sale deed has also not been produced.

The judgments and decrees passed by the Courts below are well reasoned and do not suffer from any illegality or infirmity. No substantial question of law arises. Finding no merit in the instant appeal the same stands dismissed.

01.10.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No