

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

RSA-3769-2009(O&M)

Date of decision:-3.10.2019

Ishwar Chand

...Appellant

Versus

Suresh Kumar and others

...Respondents

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

Present: Mr.Harsh Aggarwal, Advocate
for the appellant.

Mr.C.B. Goel, Advocate
for the respondents No.1 to 3.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs Suresh Kumar, Manoj Kumar and Ranbir Singh alias Ran Singh, all sons of Harpal Singh son of Anant Ram, residents of Ladwa Hanori Road, Tehsil Thanesar, District Kurukshetra had brought a suit against defendants Sushil Kumar son of Jai Singh and Ishwar Chand son of Nathi Ram seeking possession by ejectment and for recovery of arrears of Rs.10,500/- with interest @ 18% per annum.

As per the case of the plaintiffs, vide rent note dated 14.1.1992, they had put defendant No.1 Sushil Kumar in possession of shop No.858, Ward No.8 within municipal limits of Ladwa, District Kurukshetra as tenant at monthly rent of Rs.1,000/- for the period 14.1.1992 to 13.1.1994, thereafter the rent was enhanced to Rs.1,500/- per month; the rainwater of adjoining shop No.858A of the plaintiffs flow through the roof of the shop No.858 owned by the plaintiffs and then falls on the road at Point B as shown in the site plan attached with the plaint; the shop is newly constructed and the site plan was sanctioned vide order No.85 dated 4.5.1989 issued by Municipal Committee, Ladwa and thereafter the construction of the shop was raised, therefore provisions of **Haryana Urban (Control of Rent and Eviction) Act, 1973** are not applicable; the plaintiffs are recorded as owners of the suit property, whereas defendant No.1 is recorded as tenant in the house tax register; that defendant No.1 had sublet the shop to defendant No.2 without the consent of the plaintiffs; defendant No.1 had not paid rent and mesne profits of the shop since 1.1.1997 to 31.7.1997, which comes to Rs.10,500/-; the plaintiffs are entitled to recover the said amount with interest @ 18% per annum from defendant No.1; they had served a legal notice under Section 106 of the Transfer of Property Act upon the defendants, which was duly received by them ; defendant No.2 sent reply to the notice claiming himself to be owner of the suit property alleging that

he had purchased it vide sale deed No.727/1 dated 12.9.1995. According to the plaintiffs, such sale deed set up by defendant No.2 is a forged document and does not relate to suit property, as such the same is ineffective qua rights of the plaintiffs; the alleged vendor of defendant No.2 was neither owner nor in possession of the suit property, therefore he was not competent to alienate the same; that since defendant No.2 has become hostile, therefore the possession of defendant No.2 over the suit property is illegal, unauthorized and that of a trespasser. The plaintiffs requested the defendants to admit their claim and hand over the possession of shop but they refused. As such, they were constrained to file the suit.

On being put to notice, both the defendants appeared and filed written statements. In the written statement submitted by defendant No.1, he had taken up various legal objections with regard to locus standi of the plaintiffs to file the suit; its maintainability contending that no cause of action arose to the plaintiffs to bring the suit and they were estopped by their own act and conduct from filing the suit; furthermore the suit was not properly valued for the purpose of Court fees etc. On merits, such defendant contended that he had left the shop after February, 1995 and thereafter has no concern therewith, therefore he is not liable to pay the rent; that it is defendant No.2, who is in possession of the shop alone since February 1995, who was put in possession of the shop by the father

of the plaintiffs Harpal Singh. In the end such defendant prayed for dismissal of the suit.

In the written statement filed by defendant No.2, he has also raked up various legal objections contending that the suit had been filed by the plaintiffs in collusion with defendant No.1. On merits, the answering defendant contended that he is owner in possession of the shop No.857A and the plaintiffs as well as defendant No.1 have no concern therewith; that the rent note, if any is fake and fabricated document, which has been created to defeat the lawful rights of the answering defendant; that defendant No.1 is the son of wife's sister of Harpal Singh, father of the plaintiffs and is first cousin of the plaintiffs; that the shop owned by him is 25 feet x 10 feet and the boundaries given by the plaintiffs are wrong; that the site plan attached with the plaint is not as per the existing position of the spot; that the plaintiffs have no concern with the shop owned by defendants No.1 and 2; that the shop No.858 is in possession of co-operative society; that the shop in possession of defendant is bearing No.857A; the defendant No.2 had got the site plan sanctioned from the Municipal Committee, Ladwa and he is owner of the same by means of registered sale deed dated 12.10.1995; that when the plaintiffs are neither owners nor in possession of the shop No.857A, the question of paying any rent to them did not arise and suit was not maintainable; though the plaintiff had served a notice

but it was duly replied. According to such defendant, his vendor got the suit property by way of a civil Court decree passed in their favour by the Court of learned Sub Judge Ist Class and demarcation of the said plot was conducted by the revenue officer on 20.12.1992 on an application of the father of plaintiffs namely Harpal Singh. Refuting the remaining assertions, such defendant prayed for dismissal of the suit.

The plaintiffs had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether vide rent note dated 14.1.1992 shop No.858 Ward No.8 situated within the municipal limits of Ladwa was let out by plaintiffs in favour of defendant no.1 at the monthly rent of Rs.1,000/-? OPP.
2. Whether construction of shop in question was completed on 4.5.1989 and therefore said shop is exempted from the provisions of Haryana Urban (Control of Rent & Eviction) Act, 1973? OPP.
3. Whether defendant No.1 has sublet the said shop to defendant No.2 without consent of plaintiffs? OPP.
4. Whether defendant No.1 has failed to pay the rent of said shop

w.e.f. 1.1.1997 to 31.7.1997 amounting to Rs.10,500/-? OPP.

5. Whether vide notice dated 24.6.1997 tenancy of defendant has been terminated? OPP.
6. Whether plaintiffs have no locus-standi to file and maintain the present suit as vide registered sale-deed dated 12.9.1995 defendant No.2 is owner of suit shop? OPD.
7. Whether plaintiffs have no cause of action? OPD.
8. Whether plaintiffs have not come to the Court with clean hands and suppressed true and material facts from the Court? OPD.
9. Whether the instant suit is collusive and an act of fraud between plaintiffs and defendant No.1? OPD.
10. Whether suit has not been properly valued for the purpose of Court fees and jurisdiction? OPD.
11. Whether suit is false and frivolous and defendant No.2 is entitled to special costs U/S 35A CPC? OPD2.
12. Relief.

Both the parties were afforded adequate opportunities to lead their evidence.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiffs, issue No.2 in favour of the plaintiffs, issues No.6, 7 and 8 against the defendants, issue No.3 in favour of the plaintiffs, issue No.4 in favour of the plaintiffs, issue No.5 in favour of the plaintiffs, issues No.9 and 11

against the defendants. Resultantly the suit was decreed with costs directing the defendants to hand over the vacant possession of the shop No.858 to the plaintiffs within a period of one month and further defendant No.1 was directed to pay arrears of Rs.10,500/- with interest @ 12% per annum. This is so done vide judgment and decree dated 19.4.2007.

Feeling aggrieved by the said judgment and decree, the defendant No.2 had filed an appeal in the Court of District Judge, Kurukshetra, which was assigned to learned Additional District Judge, Kurukshetra. However, learned Additional District Judge, Kurukshetra vide judgment and decree dated 31.8.2009 dismissed the said appeal upholding the judgment and decree passed by the trial Court while modifying the rate of interest from 12% to 9% per annum.

Being dissatisfied with the judgments and decrees passed the Courts below, defendant No.2 has filed the present regular second appeal before this Court, notice of which was issued and respondents/plaintiffs No.1 to 3 have appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

The Courts below in light of the facts and circumstances of the case and analyzing the evidence brought on file by both the parties have found merit in the case of plaintiffs and version of

defendant No.2 that he is owner of the shop has been rejected. The trial Court has observed that rent note dated 14.1.1992 Ex.P2 executed by Harpal Singh, father of the plaintiffs in favour of defendant No.1 Sushil Kumar was duly proved and the same is corroborated from the fact that corresponding entries in the municipal record reflecting Sushil Kumar to be a tenant in the shop in dispute are there duly proved by PW2 Surinder Chadha, Cashier, Municipal Committee. Furthermore from the perusal of registered sale deed dated 8.3.1985 Ex.P21 and sanction order Ex.PW16/B and sanctioned site plan Ex.PW16/A proved by PW16 Jiya Lal besides testimony of PW5 Harpal Singh, father of plaintiffs, it comes out that the shop in question was constructed in the year 1990-91 after getting the site plan sanctioned from MC, Ladwa on 4.5.1989, meaning thereby that the shop in question was constructed within 10 years of being let out, which is exempt from the provisions of Haryana Urban (Control of Rent & Eviction) Act, 1973.

The rival contentions of learned counsel for defendant No.2 with regard to shop in question have also been discussed. The question to be seen is as to whether the defendant is in possession of shop belonging to the plaintiffs or is in possession of other shop belonging to him with which the plaintiffs have no concern. The trial Court dealing with this issue has referred to testimony of PW2 Surinder Kumar, Cashier, MC, Shahabad, who had admitted that two

shops No.858 and 858A are in ownership of the plaintiffs and shop No.859 is owned by Harpal Singh, father of the plaintiffs and shop No.859A is in the ownership of defendant No.2, which was earlier in the name of Jagmal and Ram Pal. PW4 Jogi Ram, Clerk, Deputy Commissioner Office had proved the inquiry report conducted by CTM, Kurukshetra. The trial Court has referred to the testimony of PW5 Harpal Singh that earlier shop in dispute was having municipal No.858 and in the year 1992, he had got the demarcation of the shop conducted and at that time it was found in khasra No.75. As per revenue record, khasra No.75 is the ownership of Punjab Wakf Board. Reference to the testimony of DW2, Sahab Singh, Consumer Clerk, UHVBVN Sub division, Ladwa, a witness examined by the defendants has been made. He had brought the file pertaining to the electricity connection deposing that on 19.8.1994, the connection was released in favour of Ishwar Chand, who had paid the security in that regard and had brought the meter himself. He proved electricity bills Ex.D2 to Ex.D33. DW3 Somesh Kumar, Manual Assistant, Weight and Measurement Department had deposed that their department regularly checks the weight and measurement of provision stores and the shop is owned and possessed by Ishwar Chand. He had proved the receipt and certificate issued by the department in that regard as Ex.D34 to Ex.D50. DW4 Ramesh Chand, Registration Clerk had deposed that vide sale deed dated

12.9.1995 Ishwar Chand had purchased the suit property from Jagmal and Ram Pal. DW9 Singh Ram, document Writer, Ladwa had proved registered sale deed and power of attorney Ex.D55 and Ex.D56, respectively. DW11 Jagmal Singh one of the vendors of defendant No.2 stated that earlier they were owner of the shop in question situated in khasra No.77 and vide registered sale deed dated 12.9.1995, it was sold to Ishwar Chand. He stated that he and Ram Pal had become owners of the shop in question on the basis of judgment and decree dated 6.11.1992 passed in Civil Suit No.1127/1992 and they had handed over the possession of shop in question to Ishwar Chand. DW12 Satpal Gupta had deposed that Ishwar Chand is in possession of the shop in question right from the beginning and Sushil Kuamr never remained in possession of the same. DW17 Ved Parkash proved the receipts Ex.D59 to Ex.D69 issued by Municipal Committee on depositing of licence fees by defendant No.2 Ishwar Chand. Copy of sanction order Ex.D70 and sanctioned site plan Ex.D71, security and malba receipt Ex.D72 proved on record. DW18 Ashwani Kumar, House Tax Clerk, proved the house tax receipt and bill Ex.D74 to Ex.D87 stating that as per order dated 19.9.1995, shop No.859 was transferred from the name of Jagmal Singh and Ram Pal to the name of Ishwar Chand. He had proved copy of assessment register in that regard as Ex.D58 and Ex.D88. He further stated that municipal number of the shop never

remained as 858, rather it is 857A and is situated in khasra No.77.

Whereas these contentions were strongly repelled by counsel for the plaintiffs. The findings recorded by learned trial Court are given in para No.18 of the judgment, which for ready reference are being reproduced as under:-

18. The plaintiffs have filed the present suit qua the shop no 858 Ward No.8 owned by them and it was let out to defendant no 1 in the year 1992 vide rent note Ex P2, whereas the defendant no 2 has claimed that he is owner in possession of shop no.857A and he has purchased the same from Jagmal son of Zile Singh and the plaintiffs are neither owners nor in possession over the shop in question bearing no 857A which the defendant purchased by virtue of sale deed dated 12.9.95 Ex.D55. Both the parties have led the evidence in order to prove their ownership over the property claimed by them. The defendant no. 2 claimed that he became owner of the shop in question by virtue of sale deed Ex.55, which he purchased from Jagmal Singh and Ram Pal, who became owner of the same by virtue of decree Ex.D57. It is for the defendant no.2 to prove that his vendor Ram Pal and Jagmal had valid title with regard to the area purchased by him. A perusal of the decree passed in favour of Jagmal and Ram Pal Ex.D57 reveals that the boundaries are different from the boundaries mentioned in the

sale deed Ex.D55 by virtue of which the defendant no. 2 has started claiming his ownership over the shop in question. When Jagmal and Ram Pal are not proved to be owner of the property having the boundaries mentioned in the sale deed dated 12.09.1995 Ex.D55, they could not transfer the valid title in favour of defendant no. 2 by virtue of Ex.D55 and the defendant no.2 did not become the owner of the property as alleged by him. The plaintiffs examined one of the plaintiffs Manoj Kumar as PW1. In his entire cross examination, he deposed that the true and right facts are in the knowledge of his father. At the time of purchase of property, they were minors. A perusal of Ex. P21 copy of sale deed reveals that there is endorsement of Sub Registrar and as per the endorsement also, Harpal Singh, father of the Plaintiffs appeared before the Sub Registrar for registration of sale deed. Not Only this plaintiffs examined their father Harpal Singh as DW5, who deposed that the property purchased by the plaintiffs vide sale deed Ex. P21 is comprised in Khasra No.75. The plaintiffs claimed that there is adjoining shop bearing no. 858A owned by the plaintiffs and the rainwater of shop No.858 A flows through the roof of the shop in question bearing no.858. If the shop in question is owned and possessed by the defendant no. 2, he would not have allowed the rain

water to flow through the roof of shop bearing no.858. The fact that the height of the shop in question is different from the adjoining shops owned and possessed by the plaintiffs and the fact that the shop in question is having separate walls and there is no common wall of the shop in question with the adjoining shops, do not prove the shop in question is not owned by the plaintiffs. Adjoining shops and the shop in question were not constructed at the same time. The question of same bricks, same height, same type of roof does not arise as there is no evidence that all the shops were constructed at the same time. In order to prove that the defendant no.2 in collusion with the officials of MC made alteration in the number of the shop in question the plaintiffs have brought on the file the report of City Magistrate. The enquiry report and the recommendations of the City Magistrate are Ex. RW4/1 and RW4/2. A perusal of the enquiry report reveals that City Magistrate has also found that Mahi Pal, Om Parkash and Shiv Ram, officials of MC Ladwa in collusion with Ishwar Chand, altered one unit of plaintiffs and changed the ownership of the shop no. 555/5 in the name of Ishwar Chand. On the recommendations of the City Magistrate, FIR bearing No. 39 dated 25.02.2003 the copy of which is Ex. P28 was registered against the officials of the municipal committee.

Further copy of charge sheet Ex. PW11/A reveals that charge was also framed against Ishwar Chand and Gurpal for changing entries in the column of ownership of the house tax assessment register. It is also proved on the file from Ex. PW4/A that the City Magistrate, Kurukshetra made the extensive enquiry regarding the property in dispute. It is also proved on the file that earlier property bearing no.555/5 was having municipal number 858/8 and the said property is part of Khasra No.75. Gurpal Ram has fictitiously shown in the record that property bearing no. 857A is owned by defendant no.2. It has also come in the report that Sushil Kumar defendant no. 1 sublet the shop in question to Ishwar Chand, defendant no. 2. From the entire evidence brought on the file by the plaintiff as well as defendant No.2 it is proved that Ishwar Chand defendant No.2 was wrongly shown as owner of shop bearing No. 555/5. It is also proved that shop bearing no. 858/8 and 555/5 is one and the same. DW17 Ved Parkash admitted in the cross examination that entry in Sr.no. 495 is made of two different inks. The name of Ishwar Chand son of Nathi Ram is written with blue ink, whereas the remaining entry is with black ink. He failed to tell in whose handwriting the entry in the name of Ishwar Chand was made. He has also admitted that there was no signatures of any officer or

President in front of entry bearing no. 857A. He has also admitted that the column of possession in front of entry bearing no. 857A is wrong. It all shows that some forgery was made in the record of MC. Further, the boundaries of the sale deed and decree sheet Ex.D55 and Ex.D57 did not tally with each other. In the receipts of payment of House Tax Ex. P9 to Ex.P13, it is shown that house tax has been deposited by the plaintiff of the property bearing no. 858-A. The Plaintiffs have specifically claimed that the shop in question is part of Khasra No. 75, whereas as per sale deed Ex.D55, the property purchased by the defendant No.2 is part of Khasra No. 77. Thus from the entire evidence, it is proved that the shop in dispute bearing no. 858 is owned by the plaintiffs and the same was let out to defendant no.1 who sublet the same to defendant no. 2 and the property purchased by defendant No.2 is not the shop in question. Plaintiffs have locus standi and cause of action to file and maintain the present suit and they have not concealed the true and material facts from the Court. Hence, all these issues are decided against the defendants.

The First Appellate Court of learned Additional District Judge, Kurukshetra was in agreement with such findings given by the trial Court and did not see any reason to upset the same. Rather the judgment and decree passed by the trial Court were affirmed with

modification of rate of interest from 12% to 9%.

With such concurrent findings of facts being there, I do not see any reason to differ with those. The judgments do not suffer from any illegality or infirmity. The findings recorded can certainly be not termed as perverse or result of misappreciation of evidence.

It may be mentioned here that during the pendency of the appeal, a Local Commissioner was appointed to visit the spot and submitted his report along with the site plan. But the question arises can this report override the findings recorded by the Courts below on the basis of evidence adduced by both the parties. The verdicts so given by the Courts below cannot be brushed aside in such a manner.

Learned counsel for the appellant has referred to judgment titled *Lakhbir Singh and others Versus Ajmer Singh* passed by a Co-ordinate Bench of this Court in RSA No.1790 of 2010 in support of his prayer that a fresh demarcation be ordered to be carried out. But I find that since on the basis of evidence adduced by the parties, the Courts below have recorded concurrent findings. There is no necessity of issuing direction to carry out demarcation at this stage.

The judgments and decrees passed by both the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The first Appellate Court has

reduced the rate of interest from 12% to 9%. That so done correctly.

Finding no merit in the present appeal, the same stands dismissed with costs.

3.10.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No