

RSA No. 4245 of 2019 (O&M)

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

RSA No. 4245 of 2019 (O&M)

Date of Decision: September 16, 2019

Ashok Kumar alias Om Parkash through LR's and others

..... Appellant(s)

Versus

Subhash Chand and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Mukesh Yadav, Advocate
for the appellants.

LISA GILL, J.

Appellants-defendants are aggrieved of the judgment and decree dated 11.03.2015, passed by the learned Additional District Judge, Narnaul as well as judgment and decree dated 12.12.2011, passed by the learned Civil Judge (Jr. Division), Mohindergarh whereby the suit for possession by way of ejectment, filed by the plaintiff-respondent no.1 has been decreed.

Brief facts necessary for the adjudication of the case are that respondent no.1-Subhash Chand (plaintiff) filed a suit for possession by way of ejectment of Ashok Kumar @ Omparkash (now represented through his legal representatives) from the residential house as prescribed in the plaint. It is pleaded that plaintiff Subhash Chand and the proforma defendants i.e. respondents no.2 to 4 are the owners in possession of the house as described and detailed in the site plan attached with the plaint. Defendant – Ashok Kumar is pleaded to have taken the suit property on rent from the plaintiff in

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the year 1984 @ Rs.100/- per month for 11 months. Period of tenancy stood expired. Tenancy of defendant no.1 is claimed to have been terminated by way of registered notice dated 10.09.2004, which was duly received by defendant no.1. No reply was submitted by defendant no.1 who is stated to be in unauthorized possession of the suit property. His ejectment was thus sought. It is further claimed that the rent in respect to the house in question was not paid from January 2004 to December 2004. Thus, the plaintiff and proforma respondents claimed to be entitled to recover Rs.12,000/- per month along with interest @ 9%. It is further claimed that without the consent of the plaintiff and proforma defendants, a part of the house was demolished by Ashok Kumar and material alterations were carried out without their consent. Plaintiff and proforma defendants wish to reside at their village and expressed a bonafide personal necessity. Defendant no.1, it is claimed, refused to hand over possession, even refused to admit the plaintiff as owner of the residential house. It is stated that defendant no.1 had earlier got instituted a civil suit in collusion with one Deep Chand seeking his own ejectment from the residential house in question. The suit was got dismissed by defendant no.1 on 09.09.2004 under Order 17 Rule 3 CPC, merely to create evidence. Deep Chand was projected to be adopted son of Kishori Lal i.e. father of the plaintiff and the proforma defendants. Ejectment of defendant no.1 i.e. appellant was thus sought.

Appellant/defendant no.1 (now represented by his LRs) contested the suit. It is denied that defendant no.1 came in possession of the suit property as a tenant under the plaintiff. He claimed to have purchased the house in question from the plaintiff and proforma defendants for a sum of

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Rs.30,000/- as the plaintiff was stated to be residing outside the village. Sale deed in respect to the suit property was not executed. A sum of Rs.2,00,000/- is claimed to have been carried out on the repairs of the property in question. Defendant no.1 further got land measuring 7x40 feet in front of his house in a compromise with Murari Lal Jagdish Prasad and incurred an expense to the tune of Rs.10,000/-. It is denied that the plaintiff or the proforma defendants have got any right, title or interest in the suit property. In view of the earlier civil suit No. 377, the plaintiff is claimed to be estopped from filing the present suit, which is stated to be barred by the principle of resjudicata. Possession of defendant no.1 over the suit property is claimed to be hostile and open, therefore, defendant no.1 claimed to have become owner of the suit property by way of adverse possession. Dismissal of the suit was prayed for.

Defendants no.2 to 4 initially appeared and admitted the contents of the plaint having no objection to the suit being decreed. Thereafter, they were proceeded exparte on 27.04.2010.

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

- i) Whether plaintiff is the owner of the house and is entitled to vacant possession of the same from the defendant on the ground mentioned in the plaint ? OPP.
- ii) Whether the plaintiff is entitled to recover areas of rent to the tune of Rs.12,000/- from January 2004 to December 2004 as alleged ? OPP
- iii) Whether the defendant has become the owner by way of adverse possession? OPP.
- iv) Whether the suit is hit by principle of limitation ? OPD
- v) Relief.

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Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record partly decreed the suit, while holding the plaintiff and the proforma defendants to be owners of the suit property, the tenancy or lease over the suit property having been terminated, defendant no.1 was held liable to hand over vacant possession of the suit property. The suit was, however, dismissed qua the arrears of rent etc. It is further observed that defendant no.1 failed to prove that he became owner of the house in question by way of adverse possession.

Appeal preferred by Ashok Kumar through his legal representatives was dismissed by the learned District Judge, Narnaul vide the impugned judgment and decree dated 11.03.2015. Aggrieved therefrom, present appeal has been filed by the plaintiff.

Learned counsel for the appellant vehemently argues that both the learned Courts below have grossly erred on facts and in law in allowing the suit filed by the plaintiff. It is submitted that the plaintiff/respondent has miserably failed to prove his ownership over the suit property. Moreover, no rent note has been produced, much less proved to indicate tenancy of the appellant/defendant no.1. Whereas appellant-defendant no.1, it is submitted, brought on record cogent evidence to indicate that the suit property was purchased by him for a consideration of Rs.30,000/-. Therefore, he was the owner in possession of the suit property. It is, thus, prayed that this appeal be allowed and judgments and decrees passed by both the Courts below be set

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aside to the extent relief has been afforded to the plaintiff/respondent. Suit filed by the plaintiff/respondent be thus dismissed throughout.

I have heard learned counsel for the plaintiff at length and have gone through the file.

Respondent-plaintiff had laid down the foundation of his case by specifically pleading that he alongwith the proforma defendants is the owner of the residential house, which was constructed within the Lal Dora of village Bhojawas. The house was pleaded to be constructed by their grand-father Kishori Lal. After his death, the suit property devolved upon Ram Niwas and plaintiff. After the death of Ram Niwas, respondent-plaintiff and his siblings i.e. proforma defendants became owners of the suit property. Defendant no.1 Ashok Kumar, on the other hand, claimed to have purchased the house in question from the respondent-plaintiff and proforma respondents for a sum of Rs.30,000/- by way of an oral sale deed. Entire consideration amount, it is stated, was paid to the plaintiff. Sale deed, however, was admittedly not executed.

At this stage, it is relevant to note that Subhash Chand PW1 has categorically asserted in respect to his right to the property. In the previous civil suit No.377/15.3.2006, defendant no.1 filed his written statement Ex.PW6/A. Ashok Kumar - defendant no.1 in the said written statement categorically admitted Subhash Chand and proforma defendant Madan Lal to be the owners of the suit property and also admitted himself (Ashok Kumar) to be in possession of the suit property as a tenant under the plaintiff and the proforma defendants. Filing of the said civil suit by Deep Chand is admitted by Ashok Kumar, who testified as DW4. In the present case, DW4 Ashok

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Kumar has denied the relationship of Deep Chand with Kishori Lal and claims to have perfected his title by way of adverse possession consequent to purchase of property from Subhash and proforma defendants. Learned Courts below have rightly held that since the appellant-defendant no.1 Ashok Kumar clearly admitted himself to be a tenant of Madan Lal and Subhash in the earlier proceedings he cannot turn around and claim to have perfected his title on the basis of adverse possession, especially in the absence of any explanation of the categoric admission of tenancy.

Appellant-defendant no.1 also claims to have purchased the property for a sum of Rs.30,000/- by way of oral sale. However, there is not an iota of evidence on record to prove the same. DW-2 Basesar categorically deposed that appellant-defendant Ashok Kumar came in possession of the suit property as a tenant under the original owner and did not take possession thereof as an owner. It is rightly held that appellant – defendant no.1 Ashok Kumar came in possession of the suit property in the year 1984 as a tenant and not as owner of the property. Therefore, his possession (of his LRs) is clearly permissive in nature and the plea of adverse possession is not available to him. Tenancy of appellant-defendant no.1 has been duly terminated by the respondent-plaintiff vide Ex.PW5/A i.e. the legal notice dated 10.09.2004. It is further apparent that the present suit is not barred by res-judicata. In this view of the matter, both the learned Courts below have rightly decreed the suit filed by the respondent/plaintiff, consequently directing defendant no.1/his legal representatives to hand over vacant possession of the house in question.

Learned counsel for the appellant is unable to point out any question of law, much less a substantial question of law, which is involved in

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this appeal for consideration of this Court. Therefore, there is no illegality, infirmity or perversity in the impugned judgment and decree dated 11.03.2015, passed by the learned Additional District Judge, Narnaul as well as judgment and decree dated 12.12.2011, passed by the learned Civil Judge (Jr. Division), Mohindergarh.

No other argument has been addressed.

There is a delay of 67 days in filing of this appeal and 1472 days in refiling of this appeal. Though no cogent reasons are coming forth for condonation of delay, the same is, however, rendered academic as the matter has been considered on merits. Applications are disposed of accordingly.

Appeal is accordingly dismissed in limine with no order as to costs.

September 16, 2019.
Sunil

(LISA GILL)
JUDGE

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