

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 28.5.2019

RSA No. 731 of 2011(O&M)

Om Parkash

---Appellant

versus

Vinod Bhayana and another

---Respondents

RSA No. 2314 of 2011(O&M)

Om Parkash

---Appellant

versus

Amarpati and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. L.M.Gulati, Advocate
for the appellant**

**Mr. R.N.Lohan, Advocate,
for respondent No. 1 in RSA-731 of 2011
for respondent No. 2 in RSA-2314 of 2011**

**Mr. Shubham Kaushik, Advocate
for respondent No. 1 in RSA-2314 of 2011
for respondent No. 2 in RSA-731 of 2011**

Rekha Mittal, J.

**This order will dispose of RSA No. 731 and 2314 of 2011
as identical questions of law and fact are involved for adjudication.**

For facility of reference, facts are taken from RSA No. 731 of 2011.

**Om Parkash-plaintiff/appellant filed suit for specific
performance on the basis of oral agreement dated 6.2.2005 in respect of**

shop bearing House Tax No. 420/1 marked with letters 'ABCD' and shown in red colour in site plan. He also prayed for declaring sale deed No. 224 dated 10.8.2007 executed by respondent No. 1 in favour of respondent No. 2 being illegal, unlawful and based on fraud and misrepresentation. He sought prohibitory and mandatory injunction to restrain the respondents not to dispossess the plaintiff-appellant from shop in dispute.

The trial court rejected claim of the appellant for specific performance of oral agreement propounded by him but allowed the relief of injunction thereby restraining the respondents from dispossessing the appellant from the shop in dispute except in due course of law.

The judgment and decree passed by the trial court led to filing of Civil Appeal No. 72-CA of 2009 titled “Amarpati vs. Om Parkash and another” and No. 74-CA of 2009 captioned “ Om Parkash vs. Vinod Bhayana and another”. Both the appeals were decided vide common judgment and decree dated 29.1.2011 passed by the District Judge, Hisar whereby appeal preferred by Amarpati-respondent No. 2 was allowed, judgment and decree passed by the trial court allowing relief of injunction against dispossession was set aside but appeal preferred by Om Parkash appellant-plaintiff was dismissed.

Counsel for the appellant, at the outset, would inform that he does not press his claim qua specific performance on the basis of

oral agreement dated 6.2.2005 and confines his submissions only qua his entitlement to the relief of injunction against dispossession from the shop in dispute. To bring home his contention with regard to findings qua possession of the shop, it is argued that appellant produced receipts issued by Municipal Council, Narnaud regarding payment of licence fee by the appellant in the years 2003 and 2005 and subsequent thereto, rightly been taken into consideration by the trial court for upholding plea of the appellant that he is in possession of the suit shop. It is further argued that trial court vide order dated 20.8.2007 appointed Sh. Sukhbir Singh Yadav, Advocate as a local commission to visit the spot and make a report regarding existing status of the property in dispute. The local commission submitted report dated 30.8.2007 Ex. P25 on the basis of his visit on 22.8.2007 at 3-00 p.m. and he visited the spot after issuance of notice to the respondents. He would apprise the court that notice was served upon respondent No. 1 and his counsel but notice could not be served upon respondent No. 2 as she was not found available at her residence. It is argued with vehemence that local commission prepared the report wherein it has been specifically mentioned that karyana business is being carried in the shop and the appellant was found sitting on the *gaddi*/counter of the shop. The local commission also got clicked photographs of the spot marked as exhibits in his statement recorded in the court. It is argued with vehemence that counsel for the respondents before the trial court failed

to successfully challenge correctness of the report prepared by the local commission and the facts recorded therein are more than sufficient to prove that appellant was in possession of the shop at the time of visit of the local commission and the shop was used for the purpose of karyana business run by the appellant. Counsel would urge that even if claim of the appellant for grant of specific performance is rejected, he is entitle to protect his possession against forcible dispossession at the hands of the respondents.

Counsel representing the respondents, on the contrary, supported the judgment and decree passed by the first Appellate Court with the submission that as the appellant failed to prove any such oral agreement between him and respondent No. 1 on the basis whereof he sought relief of specific performance as well as his plea that he was tenant in the disputed shop prior to agreement dated 6.2.2005, the Appellate Court has rightly rejected his claim for consequential relief of injunction against dispossession. It is further argued that receipts qua payment of licence fee to Nagar Palika, Narnaud by no stretch of imagination can be an evidence of possession of disputed shop by the appellant much less he being a tenant in the said shop.

I have heard counsel for the parties,perused the paper book and records.

As has been noticed hereinbefore, the appellant has given up his principal claim for specific performance of oral agreement dated

6.2.2005, therefore, findings of the courts rejecting plea of the appellant for grant of specific performance of said agreement are liable to be affirmed.

The appellant, in para 3 of the plaint, had stated that he is a tenant of respondent No. 1 in the shop in dispute. He has not given particulars with regard to commencement of tenancy or rate of rent etc. Counsel for the appellant has failed to point out any materials on record to establish plea of the appellant that he was inducted as tenant in the disputed shop or he ever paid rent to Sh. Vinod Bhayana-respondent No. 1. He has not produced any documents with regard to business being carried on in the disputed shop to prove his possession from a particular date, month or year. The appellant in his cross examination had stated that he is in possession of rent receipts but failed to produce any such document. As per the settled position in law, if a party fails to produce documents in his possession which can throw light on the issue in controversy, an adverse inference is liable to be drawn against him. Failure of the appellant to produce any such receipts leads to an inference that he is not in possession of any such document. As has been rightly argued by counsel for the respondents, neither few receipts with regard to payment of licence fee to Nagar Palika, Narnaud nor the report prepared by the local commission can be an evidence of alleged tenancy qua the shop in question. Even the trial court while granting injunction against dispossession has not recorded

any such findings that the appellant is in possession as a tenant in the suit shop. In this view of the matter, I have no hesitation to conclude that appellant has failed to establish his plea that he was a tenant in the suit shop prior to year 2005. No sooner the appellant has failed to establish his primary plea of entitlement to specific performance of oral agreement to sell or even the factum of tenancy qua the suit shop, he has failed to prove his lawful or established possession to assert his claim for equitable and discretionary relief of injunction against true owner and that too by way of consequential relief. In this view of the matter, I do not find an error much less illegality in the judgment passed by the first Appellate Court.

For the foregoing reasons, finding no merit, the appeals fail and are accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

28.5.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No