

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

RSA-4949-2012(O&M)

Date of decision:-25.7.2019

Sucha Singh (since dead) represented through his legal heirs

...Appellant

Versus

Smt.Hardeep Kaur and others

...Respondents

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

Present: Mr.Chetan Kapoor, Advocate
for the appellant.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff – Sucha Singh had brought a suit against the defendants - Darshan Lal, Hardeep Kaur and Mehboobpreet seeking possession by way of ejectment of defendant No.1 from two shops measuring 24' x 37' constructed in Khasra No.456 situated at village Basantpura fully detailed and described in the head-note of the plaint besides seeking

recovery of Rs.33,600/- as arrears of rent from 28.2.2001 to 28.2.2003 @ Rs.1,400/- per month.

As per the version of the plaintiff, he had purchased khasra No.456 along with other khasra numbers from Krishna Devi, widow of Om Parkash and others vide sale deed dated 28.2.2001 registered on 12.3.2001; that the defendant No.1 has been in possession of the shops as lessee paying rent of Rs.1,400/- per month to Hardeep Kaur wife of Ramji Dass – defendant No.2; that after purchase, the plaintiff has also become co-sharer in khasra No.456 and he had requested defendant No.1 to pay the rent to him proportionately but he did not do so; that the plaintiff had requested him to vacate the shops in dispute but to no effect; that he had got a legal notice under Section 106 of Transfer of Property Act issued to defendant No.1 to vacate the shops and to pay the arrears of rent but to no effect; that defendant No.1 remained adamant to pay rent to defendant No.2 and defendant No.2 had not been paying the proportionate rent to the plaintiff. Feeling aggrieved the plaintiff had filed the suit in question.

On notice defendant No.1 did not appear despite service, as such proceeded against ex-parte. Whereas defendants No.2 and 3 appeared and filed separate written statement.

In the written statement filed by defendant No.2, she had contended that the plaintiff had concealed material facts from the

Court more particularly that the High Court vide order dated 24.2.2003 had directed the parties to maintain status-quo with regard to possession over the land comprised in khasra No.456, as such suit was not maintainable. On merits, material assertions in the plaint were denied contending that the plaintiff had no right to get any share in the rent and further plaintiff and defendant No.2 were also co-sharers in khasra No.94 of land situated at Basantpura, Tehsil Rajpura; that the plaintiff had given the possession of khasra No.94 in lieu of his share in the khasra No.456 and the plaintiff has been getting all benefits of that land and has been in possession of that chunk of land including shop constructed over it; that defendant No.2 has not been getting any benefit from the said piece of land; that the plaintiff and defendant No.2 had mutually agreed to the effect that the plaintiff would remain in possession of the land comprised in khasra No.94 including the share of defendant No.2 and defendant No.2 shall remain in possession of the land comprised in Khasra No.456 including the share of plaintiff, as such shops in question and other shops constructed in khasra No.456 were rented out by defendant No.2. In the end, such defendant prayed for dismissal of the suit.

In the written statement filed by defendant No.3, he contended that plaintiff has no concern with the shops in question and as a matter of fact the answering defendant is owner of the shops

on the basis of decree dated 4.11.1993 passed in Civil Suit titled as 'Mehboobpreet and others Versus Parshotam Dass' and as such the answering defendant was declared to be owner of 7 shops and the building boundaries of which are mentioned in the decree dated 4.11.1993 and it had been made clear in the said decree that the answering defendant would receive the rent of 7 shops and building situated at village Basantpura, which were constructed in khasra No.456. Refuting the remaining allegations, such defendant also prayed for dismissal of the suit.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing the learned counsel for the parties, the trial Court vide judgment and decree dated 6.5.2011 partly decreed the suit of the plaintiff to the effect that he is entitled for proportionate rent qua the shops in question as per his share which comes to Rs.660/- per month from 28.2.2001 to 28.2.2003, which comes to Rs.15,840/- from defendant No.2.

The reasoning for arriving at such conclusion is contained in paras No.12 and 13, which for ready reference are reproduced as under:

12. After perusing the entire file meticulously and hearing the respective submissions of the learned counsel for the parties, this court reached to the conclusion that the plaintiff is not entitled for

the ejectment of the shops in dispute as the plaintiff is seeking ejectment of shops allegedly to be constructed in khasra No. 456 and DW2 Kishori Lal has stated in his cross examination that all the shops were got constructed by Parshotam Dass and he was receiving the rent of all these shops. Similarly DW1 Hardeep Kaur defendant No. 2 has categorically stated that Parshotam Dass was receiving the rent of shops for the last 10/11 years and now she is receiving the rent of the shops constructed in khasra No. 456 meaning thereby the plaintiff has never ever given these shops on rent to the defendant No. 1. PW3 has also categorically stated that Parshotam Dass rented out shops of Khasra No. 456 during his life time and after his death defendant No. 2 Hardeep Kaur is receiving the rent of shops of Khasra No. 456 and no partition of the property has been taken place. Further the plaintiff has not pleaded in the pleadings that he had given the said shops on rent to defendant No. 1, therefore, plaintiff cannot be considered as landlord and he is merely a co sharer after the purchase of share in khasra No. 456 along with other khasra numbers. Perusal of sale deed Ex.P1 and Ex.P2 indicates that the plaintiff has purchased the share in the land comprised in khasra No. 94, 92, 93 and 456 measuring 3 bighas 15 biswas and 15 biswasee vide sale deed dated 28.2.2001 and 1 bigha 12 biswas 10 biswasee vide sale deed dated 28.1.2000. The jamabandi Ex.P13 produced by the plaintiff indicates that Sucha Singh is co-Sharer to the extent of 3674/7780 shares whereas Hardeep Kaur is co Sharer to the extent of 100/7780 share in the remarks column indicates that Sucha Singh has sold out 17/36 share to Inderjit Singh, Surjit Singh, Karamjit Singh and Gamdoor Singh meaning thereby Sucha Singh is now having share to the extent of 0-6.75 biswas in this case. Jamabandi further reveals that Hardeep Kaur is owner in possession over 0-5 biswas whereas Sucha Singh is in possession of 0-9 of khasra No.456 min and other co-sharers are in possession over this gair mumkin number but in the ownership column all the other persons are also

mentioned as co-sharer and co-owner qua khasra No. 456 and those are not impleaded as party in this case. The plaintiff has filed the suit for partition of the land which is still pending, which is evident from Ex.D2 regarding khasra No. 456 which is gair mumkin land and the partition of the other property is also yet to be effected. Except this case the plaintiff has filed three other suits titled as Sucha Singh Vs. Sukhchain Singh etc., Sucha Singh Vs. Amrik Singh etc. and Sucha Singh Vs. Sunil Kumar & others 4 other shops and in case the eviction is granted then it would amount to the partition of the specific portion of the gair mumkin land which hearing the other parties, which is not permissible under the provision of law. Since the present suit has been filed by the plaintiff for the ejectment of defendant No. 1 from the two specific shops by serving notice under Section 106 of Transfer of Property Act considering him to be the landlord/owner and the suit is not maintainable in the absence of consent of the other co-sharers. It is also relevant to note here that defendant No. 1 is paying rent to the defendant No. 2 and defendant No. 2 has taken the stand that plaintiff is receiving the rent of the shops constructed in Khasra No.451 but the defendant has not taken the plea in the written statement and it cannot be taken into again and also the defendant has failed to prove the settlement as alleged by the defendant and tried to prove in the evidence led by the defendant, therefore, whatever has been pleaded by the defendant has not been proved by the defendant and what ever stand has been tried to be proved by the defendant has not been pleaded in the pleadings so far as the plea of family settlement is concerned. Defendant No. 3 has come forwarded with entirely a new plea that a decree has been passed in his favour but the same has not been incorporated in the revenue record and Ex.D2 is silent regarding the khasra number and defendant No. 3 has failed to connect this property with khasra number 456 involved in the present case. Therefore, the contention of the learned counsel for the plaintiff that plaintiff is

entitled for ejectment is devoid of merits. Since the plaintiff is co-sharer in khasra No. 456 alongwith other co sharers and admittedly the property is giving fruits and accordingly plaintiff is entitled for the fruit i.e. rent occurred from the khasra No. 456 to the extent of his share and in this case the plaintiff has alleged the rent to the tune of Rs.1400/- of both the shops, which has not been disputed by the defendant No. 2 in the written statement and it comes out to be Rs. 660/- of two shops from his share i.e. 0-6.75 biswas in khasra no. 456.

13. Resultantly, in the light aforesaid deliberations recorded, the plaintiff has proved that he is entitled to proportionate rent from the shops qua his share. Accordingly, issue No. 1 is decided in favour of plaintiff to the extent that he is co-owner in the suit property and issue No. 2 is decided against the plaintiff, whereas issue No. 3 is partly decided in favour of plaintiff, and issue No. 5 is decided against defendant and in favour of plaintiff.

The defendant No.2 felt aggrieved by the said judgment and decree and she had filed an appeal before the Court of District Judge, Patiala, who vide judgment and decree dated 1.2.2012 accepted the appeal. Resultantly the judgment and decree passed by the trial Court to the extent of decreeing the suit partly were set aside and the suit filed by the plaintiff was dismissed in entirety with costs throughout. The relevant part of the reasoning given for arriving at such inference is contained in paras No.23 and 24, which for ready reference are reproduced as under:

23. Admittedly suit for partition is pending between the parties and has not come to the final stage. The learned trial court has rightly observed that the plaintiff is not entitled to any possession by

ejectment of tenant. To the mind of this court, he is not entitled to seek rent proportionate to his share but the learned trial court has failed to appreciate the evidence and factual position and wrongly ordered that the plaintiff is entitled to proportionate rent to the extent of his share, which the trial court has calculated as Rs. 660/- per month. In fact the trial court without any cogent reason partitioned the rent. The plaintiff is not entitled to share or to collect the rent with regard to tenancy created by the co-sharer. The findings of the trial court are not based on proper appreciation of evidence. The plaintiff is not entitled to get the ejectment of the tenant solely on the ground that he has become co-sharer to some extent. Similarly, he is not entitled to share the rent from the landlady Hardeep Kaur.

24. So far as plea taken by defendant Mehboobpreet is concerned, the same does provide any help to him. In decree dated 4.11.93 all the co-sharers were not impleaded as a party. Therefore, this decree is not binding upon plaintiff as well as appellant.

Now it was turn of the plaintiff Sucha Singh (since deceased, now represented through his legal representatives) to feel dissatisfied and he had filed the present regular second appeal before this Court.

I have heard learned counsel for the appellants besides going through the record and I find that there is no merit in the regular second appeal.

The trial Court on consideration of pleadings of the parties, evidence available on the record and in light of the legal position has decreed the suit of the plaintiff partly finding him

entitled to for proportionate rent qua the shops in question as per his share. However, his claim with regard to possession by way of ejectment of defendant No.1 from the shops in question was rejected for the reason that it had transpired from the record that all the shops were constructed by Parshotam Dass and he was receiving the rent of those shops and after him Hardeep Kaur – defendant No.2 had been receiving the rent, meaning thereby that plaintiff had not given those shops on rent to defendant No.1 and furthermore no formal partition had taken place between the co-sharers. It being so, the plaintiff could not be considered to be a landlord and he was merely a co-sharer after purchase of share in khasra No.456. Though the trial Court was justified in coming to the conclusion , however, the other conclusion drawn that he was entitled to proportionate share in the rent was obviously wrong. The plaintiff had not challenged the judgment and decree passed by the trial Court vide which the relief prayed for by him seeking possession by ejectment of defendant No.1 from the shops in question had been declined to him, as such the judgment and decree to that extent has become final and binding upon him. In an appeal filed by Hardeep Kaur – defendant No.2, learned District Judge, Patiala rightly rectified the mistake committed by the trial Court in allowing the plaintiff share in the rent. Since the plaintiff was not found to be landlord or co-landlord, he was not entitled to get any share in the rent.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the first Appellate Court.

The appeal stands dismissed accordingly.

25.7.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No