

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

**RSA No.419 of 2016 (O&M)
Date of Decision.04.04.2019**

M/s Deepika Extraction Pvt. Ltd.Appellant

Vs

Sonia Verma and othersRespondents

2. RSA No.1331 of 2016

M/s Deepika Extraction Pvt. Ltd.Appellant

Vs

Sonia Verma and anotherRespondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kartik Gupta, Advocate
for the appellant.

Mr. Rajesh Arora, Advocate
for caveators-respondents No.1 and 2.

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AMIT RAWAL J.(ORAL)

C.M. No.1234-C of 2016 in RSA No.419 of 2016

For the reasons stated in the application, delay of 193
days in filing of the appeal is condoned.

Application is allowed.

Main cases

This order of mine shall dispose of two regular second
appeals bearing No.419 of 2016 at the instance of defendant No.2
arising out of decision rendered in civil suit No.17 of 2008 titled as
'Sonia Verma and another Vs. M/s Mahanagar Telephone Nigam and

another' (hereinafter called the 1st suit) seeking ejectment and recovery of mesne profits and RSA No.1331 of 2016 arising out of decision rendered in civil suit No.354 of 2009 titled as 'Hardeep Verma and another Vs. M/s Deepika Extractions Pvt. Ltd.' (hereinafter called the 2nd suit) for permanent injunction seeking restraint against the appellant-defendant from indulging into unlawful activity of getting into the site of roof of the second floor. Both the appeals are connected as pertain to same premises and therefore, are being decided together by common order. The facts are being taken from RSA No.419 of 2016.

Respondents No.1 and 2-plaintiffs filed the 1st suit against the appellant and respondent No.3 for ejectment claiming themselves to be owners of built up area of second floor i.e. 1458 sq. ft. situated in the colony known as Jacobpura by virtue of sale deed bearing vasika No.25174 dated 01.02.2008 with all rights, liberties, interests, benefits, easements and privileges with the stipulation that part of the top of the roof of the second floor was already on lease with the defendant (Antenna) as per agreement dated 14.7.2005. On acquiring title, plaintiffs were entitled to the monthly rent from the MTNL-defendant No.1 being the lessee but when they failed to pay rent despite receipt of legal notice and on expiry, suit aforementioned for ejectment was filed and claimed mesne profits @₹25,000/- per month in addition to arrears of rent @₹9800/- per month from 1.2.2008 till the expiry of the period of notice of termination dated 22.5.2008.

Defendant No.1 filed separate written statement and

raised preliminary objections qua cause of action, non joinder of necessary parties and suit being not properly valued. On merit, denied ownership of the plaintiff. It was stated that they had entered into an agreement with the owner of the premises M/s Deepika Extractions Pvt. Ltd. (defendant No.2) in respect of installing the BTS antenna on the terrace of the premises No.570/4, Savitri Complex, Jacobpura, Gurgaon. Defendant No.2 sold the property to Rajesh Kumar without roof rights vide sale deed dated 4.8.2006. Therefore, Rajesh Kumar did not have any power to sell further without any right and title. During the pendency of the suit, appellant-defendant No.2 was impleaded under Order 1 Rule 10 CPC and in the written statement opposed the claim of respondent No.1 and 2 plaintiffs by alleging that defendant No.2 sold the basement, first floor, second floor i.e. aggregate covered area measuring 4374 sq. metre to Rajesh Kumar and as per Clause 5 and 6, it was clarified that vendee would not interfere into the usage of the roof wherein defendant No.1 had installed GSM antenna as lessee. The sale deed aforementioned clarified that there are no other area other than mentioned, therein, sold to Rajesh Kumar. It was further clarified that the vendee did not transfer any rights in the ground floor and in the terrace/roof/third level of the suit property.

Since the parties were at variance, the trial Court framed following issues:-

“1. Whether the plaintiffs are entitled to decree of possession by ejectment as prayed for? OPP

2. Whether the plaintiffs are entitled to decree of

recovery of arrears of rent from 1.2.2008 at the contractual rate of 9800/- per month with interest of 12% till 5.6.2008 as prayed for? OPP

3. Whether the plaintiffs are entitled to mesne profits for use and occupation of the suit property w.e.f. 8.6.2008 at the rate of Rs.25,000/- per month till handing over actual physical possession with interest pendent lite at the rate of 12% as prayed for? OPP

4. Whether the suit is not maintainable by the plaintiffs having no locus standi to file the same? OPD

5. Whether the suit is barred for non-joinder of parties? OPD

6. Whether the suit is not properly valued? OPD

7. Relief.”

Plaintiffs-respondents No.1 and 2 examined two witnesses PW1 Hardeep Singh and PW2 Rishi Sikka and brought on record following documents:-

“ Ex.P1 Copy of site plan.

Ex.P2 Copy of sale deed bearing vasika No.25174 dt. 1.2.2008.

Ex.P2 Copy of sale deed bearing vasika No.15801 dt. 31.10.2007.

Ex.P3 Copy of ID proof of Rajesh Kumar.

Ex.P4 Copy of ID proof of Smt. Sonia Verma.

Ex.P5 Copy of sale deed bearing vasika No.8480 dt. 4.8.2006.

Ex.P6 Copy of sale deed bearing vasika No.9829 dt. 4.8.2006.

Ex.P7 to Ex.P9. Copy of requisite letter addressed to

MTNL.

Ex.P10 Acknowledgment.

Ex.P11 to P12 Receipt of registered post.

Ex.P13 Copy of courier receipt.

Ex.P14 Legal notice.

Ex.P15 Postal receipts.

Ex.P16 Legal notice

*Ex.PW2/1 Certified copy of sale deed bearing vasika
No.25174 dt. 1.2.2008.*

*Ex.PW2/2 Certified copy of sale deed bearing vasika
No.15801 dt. 31.10.2007.*

*Ex.PW2/3 Certified copy of sale deed bearing vasika
No.25173 dt. 1.2.2008.*

*Ex.PW2/4 Copy of letter No.GRG ADV GPK290-05
dt. 28.8.2014.*

*Ex.PW2/5 Copy of sale deed bearing vasika No.9829
dt. 4.8.2006.*

*Ex.PW2/6 Copy of order passed by Hon'ble Punjab &
Haryana High Court in C.R. No.4580 of
2013."*

On the other hand, defendants examined one witness and closed the evidence.

The trial Court on the basis of evidence and by noting that DW1 witness of defendant No.2, who admitted of having not taken any steps for recovery of rent against MTNL, decreed the suit ordering ejectment with recovery of ₹9800/- per month w.e.f. 1.2.2008 till 8.6.2008 along with interest @12% per annum by adjustment of ₹6,86,000/- already received by the plaintiff and mesne profits @₹17,000/- per month w.e.f. 9.6.2008 till the handing over of actual possession of the suit property along with interest @12% per annum from the date of suit till the actual date of realization.

In the second suit, plaintiffs-respondents No.1 and 2 sought injunction qua unlawful possession and activity on the site in dispute. The second suit was also decreed restraining the defendants from indulging in any unlawful activity in getting onto the site of roof of second floor for getting unlawful possession from opening starting from the ground floor of the total commercial building situated in Jacobpura, Gurgaon bearing No.199/6 (old No.570/4 and 610/12).

Three appeals were preferred; one by the appellant-defendant No.2, second by the plaintiffs and third by the defendant No.1 i.e. MTNL. All three appeals were consolidated and disposed of by common judgment whereby the appeal of MTNL was partly allowed by modifying the judgment and decree of the trial Court qua mesne profits, instead of ₹17,000/- per month were determined at ₹11,172/- i.e. 14% of ₹9800/-per month and the appeals of plaintiffs-respondents No.1 and 2 and appellant-defendant No.2 were dismissed. Similarly, appeal preferred on behalf of appellant-defendant against the judgment and decree passed in second suit was also dismissed. In these circumstances, two appeals have been filed.

Mr. Ashish Aggarwal, learned Senior Counsel assisted by Mr. Kartik Gupta, learned counsel appearing on behalf of the appellant submitted that judgments and decrees of both the Courts below rendered in both the suits are totally perverse as a result of misreading and misconstruction of the contents of the sale deed dated 4.8.2006, much less, para 5 and 6 of the lease deed dated 14.7.2005. From the perusal of the contents of sale deed whereby area having installation of (GSM antenna), was never sold but only the area of

second floor with specific area i.e. 1458 sq. ft. out of 2300 sq. ft was sold. Clause 5 of the sale deed dated 4.8.2006 clearly mentioned that no roof rights were given. Defendant No.1 did not pay rent to defendant No.2. There was no attornment by defendant No.1 in favour of plaintiffs-respondents No.1 and 2. The Civil Court did not have jurisdiction as the premises were situated in municipal limits of Gurgaon and the remedy was to file eviction petition under the Haryana Urban (Control of Rent and Eviction) Act, 1973 as the premises were not exempted from the applicability of the aforementioned Act. The onus to eradicate the objection qua jurisdiction of the Civil Court was upon the landlord. No such evidence had been led and in support of the argument, relied upon the ratio decidendi culled out by Hon'ble Supreme Court in **Ram Saroop Rai Vs. Smt. Lilawati AIR 1982 (SC) 945.**

In the other regular second appeal submitted that in the absence of any sale, injunction sought was also liable to be rejected.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit. The relevant portion/clauses 5 and 6 of the lease deed dated 14.07.2005 and relevant portion of sale deeds dated 4.8.2006 & 1.2.2008 are reproduced herein below:-

“14.07.2005

Whereas the Lessor(s) is/are the absolute owner of the building/part of the building and premises known as – being at Deepika Extractions Pvt. Ltd., 570/4, Savitri Complex, Near Govt. Girl Sr. Sec. School, Jocabpura, Gurgaon (Haryana) and absolutely seized and entitled to commercial space of its terrace at floor level 3th

(consisting GF as level one), more specifically described in annexed schedule and hereinafter referred “demised premises” with full power of disposal at Delhi.”

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5. That the lessor agrees to provide the lessee uninterrupted access to the demise premises at tall time during the entire terms of this lease and extension thereof.

6. That in the event sale or transfer of building or any of its portion wherein demised premises as referred to are situated, adequate provision shall be made in sale deed/lease deed by whatsoever names called for to ensure rights of the Lessee conferred herein so that no objection/impediments are legally raised by any one against the Lessee from peaceful enjoyment of the said demises premises.

4.8.2006

5. That the Part of Top roof of the above said house is on lease with MTNL for installing of GSM Antenna and the Vendee is agreed to carry on the same under the same terms and conditions laid in the agreement executed between Vendor and the MTNL vide Agreement dated 14.7.2005.”

1.2.2008

2. That the vendor herein grants, conveys and transfers all his rights, titles and interest of the above said Commercial Space bearing Municipal Committee No.199/6 (Old No.570/4) having built up area of Second Floor i.e. 1458 sq. ft. situated in the colony known as Jacubpura Gurgaon within M.C. Area Tehsil & District Gurgaon (Haryana) unto the venees herein. The Vendee shall have the terrace rights and staircase on the said space. The Vendee is left with no right in the other floor of the said property.”

On cumulative reading of the aforesaid clauses, it is clear

that respondents No.1 and 2-plaintiffs purchased terrace rights and staircase and the sale deed so far neither been rectified nor challenged. In other words, no steps have been taken to assail the aforementioned sale deed either in separate suit or by way of counter-claim. DW-1 Jagdish, witness of the appellant in cross-examination admitted that they did not take any steps to recover rent from MTNL. The aforementioned admission leaves no manner of doubt that there was no relationship of landlord and tenant by virtue of sale deed dated 01.02.2008. Clause 5 of the sale deed, in favour of Rajesh Kumar do not require any other interpretation as it clearly specify that vendee had agreed to carry on lease with the MTNL under the same terms and conditions and an attempt was made that it was with regard to status of the MTNL being lessee of defendant No.2 as the plain and simple language as extracted above do not lead to two meanings, thus, the argument, in such circumstances, must fail.

Coming to the objection of jurisdiction of the Civil Court, I am afraid aforementioned argument cannot be taken for the first time in the regular second appeal, despite vehement attempt. The lower Appellate Court dealt with the objection but on reading of the issues extracted above and as well as memorandum of appeal filed before the lower Appellate Court, no such objection was taken. This Court drew attention of the learned Senior Counsel to point out said objection in any of the grounds of appeal but the same could not be pointed out. Injunction was a natural corollary which has rightly been granted.

In view of such circumstances, I do not find any illegality

and perversity in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, both the appeals are dismissed.

(AMIT RAWAL)
JUDGE

April 04, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No