

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

RSA No.2720 of 2018(O&M)

Date of decision: 11.9.2019

Amarjit Singh

.....Appellant

VERSUS

Sarabjit Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Namish Sodhi, Advocate for the appellant.

REKHA MITTAL, J.

CM No.9360-C of 2019

Heard.

Allowed as prayed for.

Document Annexure A-1 is taken on record subject to just
exceptions.

Disposed of accordingly.

RSA No.2720 of 2018

Challenge in the present appeal has been directed against
concurrent findings recorded by the Courts whereby suit for declaration
and permanent injunction filed by the appellant/plaintiff was dismissed by
the trial Court vide judgment and decree dated 31.07.2015 and appeal
preferred by unsuccessful plaintiff did not find favour with the Additional
District Judge, Ludhiana vide judgment and decree dated 11.12.2017.

The appellant/plaintiff assailed agreement dated 09.09.2010 being an act of fraud and misrepresentation with a prayer that amount of Rs.1,47,500/- illegally received by the defendant from plaintiff under the said agreement is liable to be adjusted towards arrears of rent and future rent of the shops in dispute on the premise that aforesaid agreement is illegal, null and void and is ineffective qua rights of the plaintiff as tenant in the two shops. Further prayer was made for grant of permanent injunction restraining the respondent/defendant from interfering in his peaceful possession of the shops in dispute and dispossessing him forcibly and illegally.

The sole submission made by counsel for the appellant is that appellant was inducted as a tenant in the disputed shops in the month of October 2007 at a monthly rent of Rs.1400/- by way of oral tenancy coupled with delivery of possession. It is argued that since the appellant is tenant in the suit property, he cannot be evicted therefrom except by initiating appropriate proceedings under the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act'), therefore, counter claim filed by the respondent and allowed by the Courts with a direction to the appellant to hand over vacant possession of the property in dispute is liable to be rejected. To bring home his contention, he has pointed out certain facts elicited in testimony of Sarabjit Singh - respondent who tendered into evidence his affidavit Ex.DA by way of examination in chief and was cross examined by counsel for the appellant. It is argued that Sarabjit Singh in para 2 of the affidavit had stated that he had friendly relations with plaintiff – Amarjit Singh and on request of the plaintiff, he had given two shops to the plaintiff for 2-3 months for running the work temporarily. In cross

examination, the witness has denied that he had friendly relations with Amarjit Singh. It is argued that if the respondent did not have friendly relations with Amarjit, there was no reason for him to allow appellant to use the disputed shops even for 2-3 months on temporary basis and this fact alone is sufficient to falsify contention of the respondent and support plea of the appellant that he was inducted as a tenant in the suit shops at monthly rent of Rs.1400/-. It is further argued that if plea of the appellant with regard to creation of tenancy is accepted, counter claim filed by the respondent for recovery of possession before the Civil Court is not maintainable.

I have heard counsel for the appellant, perused the paperbook particularly certified copy of agreement dated 09.09.2010 sought to be declared as null and void qua tenancy rights of the appellant and statement of Sarabjit Singh – respondent as a witness.

Perusal of headnote of the plaint, reproduced in judgment of the trial Court, would reveal that the appellant/plaintiff sought a declaration in respect of the agreement dated 09.09.2010 being illegal, null and void, ineffective qua rights of the plaintiff as a tenant in two shops being the result of fraud and misrepresentation, thus, liable to be cancelled. The Courts refused to accept this contention of the appellant in respect of agreement in question. Counsel for the appellant has not made any submissions to challenge consistent findings recorded by the Courts rejecting plea of the appellant qua challenge to the agreement dated 09.09.2010 on the basis whereof, the appellant agreed to pay an amount of Rs.2,95,000/- in four installments and hand over vacant possession of the two shops by 20th May 2012. It is also an admitted position of the case that

under the agreement, the appellant paid two installments of Rs.73,750/- each making an amount of Rs.1,47,500/- in respect whereof endorsements were made on the back of first page of the agreement. The agreement specifically records that Sarabjit Singh (first party) has given the shops in question to Amarjit Singh for the purpose of use and the matter has been settled between the parties with the intervention of Panchayat and respectables as a suit is pending in the Court at Ludhiana in respect of the shops. It is also not disputed, as has been noticed by the Courts, that a copy of compromise deed in the shape of an agreement was produced for the first time before a Court of law at the behest of the appellant in the suit for permanent injunction filed by him and the said suit was dismissed as withdrawn in view of compromise on the basis of statement made by counsel for the appellant in the earlier suit. As counsel for the appellant has not assailed findings of the Courts with regard to compromise deed Ex.P2, the same attained finality and liable to be affirmed and ordered accordingly. That being so, all the contents of agreement becomes binding against the appellant. The recital in the compromise that shops were given by the first party to the second party for the purpose of use goes a long way to negate plea of the appellant that he was inducted as a tenant in the suit shops and entitle to protection under the Act. Perusal of cross examination of Sh. Sarabjit Singh would reveal that the witness was cross examined in three sittings on 22.08.2012, 30.08.2012 and 27.09.2012. On each occasion, cross examination of the witness runs into several pages. Perusal of the entire cross examination of Sarabjit Singh would reveal that there is lot of repetition, may be, in an effort to extract from him that appellant was inducted as a tenant in the suit property but counsel for the appellant before

the trial Court remained unsuccessful. The mere fact that Sarabjit Singh in his examination in chief had stated that he had friendly relations with Amarjit Singh but denied the said fact in his cross examination conducted in the last sitting on 27.09.2012, in my considered opinion, is not sufficient to accept contention of the appellant that he was inducted as a tenant in October 2007 at monthly rent of Rs.1400/-. Had it been so, there was no reason for the appellant not to get the said fact recorded in the compromise deed dated 09.09.2010 that records the property being given to him for the purpose of use. In this view of the matter, I do not find an error much less perversity that would call for intervention.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

SEPTEMBER 11, 2019

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no