

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

RSA-5281-2018(O&M)

Date of decision:-29.8.2019

M/s Ashian Ply Palace and another

...Appellants

Versus

M/s Chaman Lal Gurdev Sharan and another

...Respondents

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

Present: Mr.R.K. Kakkar, Advocate
for the appellants.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs M/s Chaman Lal Gurdev Sharan, Saw Mill owner, Ferozepur City and its proprietor - Sh.Sharan Yog had brought a suit against defendants M/s Ashian Ply Palace, Plot No.38, Industrial Area, Ferozepur City and its Proprietor - Yogesh Kumar @ Raju seeking possession of industrial unit bearing plot No.38 having construction therein fully detailed in head-note of the plaint shown in the site plan attached therewith situated at Industrial Area, Ferozepur City besides claiming mesne profits @ Rs.4,000/- per month from the date of filing of suit till delivery of possession.

As per the version of the plaintiffs, plaintiff No.1 had purchased the suit property from State of Punjab and raised construction therein; that the plaintiff firm carried on its business in the suit property till 2004 and thereafter it was given on rent to defendant No.1 - M/s Ashian Ply Palace, Ferozepur City through its Proprietor - Yogesh Kumar @ Raju – defendant No.2 on payment of rent of Rs.4,000/- per month; since the defendants failed to pay rent of the suit property after May, 2007, the plaintiffs filed an ejectment petition against defendants wherein defendants appeared and filed written reply denying the relationship of landlord and tenant and claiming that the suit property had been sold orally by plaintiff No.2 to defendant No.2 in the year 1998 for a sum of Rs.2,50,000/- and the entire sale consideration stood paid by the vendee to the vendor; that defendant No.2 had become owner of the suit property by way of adverse possession; that though the parties went on trial, however later on the plaintiffs had withdrawn the rent petition and filed a suit for possession. According to the plaintiffs, the original conveyance deed of the suit property is in possession of defendant as it had fallen into hands of defendant No.2 from the premises of the plaintiffs; that the plaintiffs being owners of the suit property are entitled to recover its possession from the defendants; that the defendants are also liable to pay mesne profits to the plaintiffs.

On notice, the defendants appeared and filed written

statement contesting the suit, raising various legal objections including that the suit was not maintainable; that the suit was time barred; that as a matter of fact there were cordial relations between plaintiff No.2 and defendant No.2 and plaintiffs wanted to sell the suit property, therefore, they negotiated with the defendants and the defendants agreed to purchase the suit property and they did so by paying a sum of Rs.2,50,000/- to the plaintiffs; that the plaintiffs had agreed to execute the sale deed in favour of defendant No.2 after obtaining permission from Department of Industries; that defendant No.2 was put in possession of the suit property at that very time and later on the defendants kept on requesting the plaintiffs to get permission from department and to execute the sale deed in their favour but to no effect; that defendant No.2 is treating himself to be owner of the suit property since January, 1998 and he has become owner of the suit property by way of adverse possession; that the plaintiff was not left with any right or interest in the suit property. Refuting the remaining assertions in the plaint, the defendants prayed for dismissal of the suit.

The plaintiffs had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are entitled for decree of possession of suit land? OPP.
2. Whether the suit of the plaintiff is hopelessly time barred? OPD.
- 2A Whether defendant No.2 has become owner of the suit property by way of adverse possession? OPD
3. Whether the suit of the plaintiff is not maintainable in its present form? OPD.
4. Whether the suit of the plaintiff is false, frivolous and vexatious? OPD.
5. Whether the plaintiff has no cause of action to file the present suit? OPD.
6. Relief.

The parties were afforded adequate opportunities to lead their evidence.

After hearing the learned counsel for the parties, the trial Court vide judgment and decree dated 15.4.2017 decreed the suit of the plaintiffs with costs in the manner that the plaintiffs were held entitled to and be put in possession of the suit property within two months of passing of that judgment otherwise they could take the possession in due course of law.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal before District Judge, Ferozepur,

which was assigned to Additional District Judge, Ferozepur, who vide judgment and decree dated 24.4.2018 dismissed the appeal and upheld the impugned judgment and decree passed by the trial Court.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the defendants have filed the present regular second appeal before this Court.

I have heard learned counsel for the appellants besides going through the records and I do not find any merit in the appeal.

In this case the plaintiffs being owners of the suit property is not disputed. As per the case of the defendants, the plaintiff No.2 had sold the suit property to defendant No.2 in January, 1998 for a sum of Rs.2,50,000/-, putting defendant No.2 in possession and since then the defendant No.2 has been treating himself to be owner of the suit property and plaintiffs are not having any right or interest, as such the plaintiffs cannot seek possession of suit property from the defendants. That contention of the defendants has been rejected by the Courts below considering that no registered document evidencing the alleged sale of the suit property by plaintiff No.2 to defendant No.2 was there. In terms of Section 17 of the Registration Act, 1908, the immovable property of the value of Rs.100/- and more can be sold only through a registered document. It being so, the plea of oral sale so set up by the defendants cannot be accepted and was rightly rejected by the Courts below. The

defendants are further claiming that they have become owners by way of adverse possession. However, the Courts below in light of the factual and legal position have concluded that the essential ingredients in that regard are missing. Rather, the defendants were found to be in permissive possession of the suit property. The plaintiffs having been found to be owners of the suit property and possession of defendants qua that property being permissive, the plaintiffs could very well recover possession of the suit property from defendants being owners thereof and suit filed by plaintiffs was rightly decreed by the Courts below.

The concurrent findings on the issues so recorded do not suffer from any irregularity or illegality. The findings are affirmed. No fault is found with the judgments and decrees passed by the Courts below. Those are upheld.

No substantial question of law arises in this appeal.

It being so and in view of the concurrent findings returned by the Courts below with which I do not see any reason to disagree, I conclude that the appeal is without merit and is dismissed accordingly.

29.8.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No