

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 5800 of 2015 (O&M)
Date of decision : January 21, 2020

Gurcharan Singh

....Petitioner

versus

Harinder Mohan

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Ashok Kumar Khungar, Advocate, for the petitioner
Mr. Ankush Singla, Advocate, for the respondent

Fateh Deep Singh, J. (Oral)

Plaintiff Harinder Mohan now deceased being represented by his legal heirs instituted against defendant Gurcharan Singh (present petitioner) a suit for possession under Section 6 of the Specific Relief Act (in short, the Act) for seeking restoration of possession of the shop detailed in the head note of the suit.

The brief claim is that the plaintiff was in occupation of the shop since about 15 years prior to 11/12.4.2011 wherein he was

carrying his business of furniture manufacturing under the name and style of M/s Jagdambe Industries. It is alleged that during the intervening night of 11/12.4.2011, the owner defendant Gurcharan Singh illegally and forcibly dispossessed him from the shop for which FIR No. 36 dated 12.4.2011 under Sections 457, 380, 447 IPC was registered with Police Station City-II, Abohar against the defendant.

The defendant in his stand took up the plea that there is no valid and legally sustainable cause of action which has arisen to the plaintiff to file the present suit who is estopped by his own acts and conduct from filing the present suit. Terming the suit of the plaintiff to be misuse of the process of the court based on false and frivolous averments.

The defendant has stoutly denied the possession of the plaintiff in the shop and the allegations so raked up by the plaintiff. The Court below framed the following issues:-

- “1. Whether plaintiff has been forcibly and illegally dispossessed from the property in dispute, as alleged ? OPP
2. In case issue No. 1 is proved whether plaintiff is entitled to restoration of possession, as claimed ? OPP
3. Whether plaintiff has no cause of action or locus

standi to file the present suit ? OPD

4. Relief.”

The plaintiff examined himself as PW1, PW2 Sukhchain Krishan, PW3 Rajpal Sokhal, draftsman, PW4 Harbhajan Singh Kamboj, PW5 HC Jarnail Singh, PW6 HC Lal Chand, PW7 HC Gurmeet Singh and thereafter closed the evidence. The defendant testified as DW1.

The court of learned Additional Civil Judge (Senior Division) Abohar vide judgment order dated 7.4.2015 decreed the suit of the plaintiff with costs directing handing over of the possession of the shop to the plaintiff. It is against the same unsuccessful defendant filed an appeal before the court of learned Additional District Judge, Fazilka and due to legal wrangle the same suit stood dismissed as withdrawn on 25.8.2015. It is subsequent thereto the present revision petition has come about.

Heard Mr. Ashok Kumar Khungar, Advocate, for the petitioner; Mr. Ankush Singla, Advocate, for the respondent and perused the records.

It is the plaintiff who has filed the suit and therefore, in view of the well enshrined principle of law laid down in **State of Madhya Pradesh vs Nomi Singh and another, (2015) 14**

Supreme Court Cases 450 the burden of proof lies upon him to establish his case and stand on its own legs by proving the case to the hilt. Reverting back to the present case, the entire evidence of the plaintiff is oral except a site plan of the place Ex. P1; ration card of the plaintiff Ex. P2, representation of the plaintiff to the police Ex. P3; application by the defendant to DIG, Ferozepur Ex. P4; statement of Gurcharan Singh Ex. P5, Inquiry Report by SP Ex. P6 and application under Order 39 Rule 1 and 2 CPC Ex. P7; copy of FIR Ex. P8, complaint filed against the defendant Ex. P9, report by SP Abohar Ex. P10, application of the complainant to DGP Ex. P11, reply by PC Branch, Ferozepur Ex. P12; photograph Ex. P13; mortgage agreement between the plaintiff and the defendant Ex. P14; receipt of payment of tax to the Civic Authority Ex. P15; site plan of the property owned by Ajit Singh Ex. P16; site plan of property owned by Gurcharan Singh Ex. P17; Electricity Bill Ex. P18; sale deed Ex. P19 and summoning notice by the police to the petitioner Exs. P20 to P22. During the course of arguments, counsel for the parties accept the fact that Ex. P18 electricity bill is in the name of Gurcharan Singh showing installation of electric connection in the premises, Ex. P19 is the sale deed by virtue of which Gurcharan Singh has purchased the property from original

owner Ajit Singh on 30.1.1997 almost 14 years prior to the present alleged incident and Ex. P15 is the Municipal tax receipt in the name of defendant Gurcharan Singh. It is the claim of the plaintiff that he was in possession of the shop about 15 years prior to 11/12.4.2011 wherein he has been running business of manufacturing furniture in the name of M/s Jagdambe Industries, the arguments of the counsel for the petitioner as to any documentary proof in favour of the plaintiff for showing possession in the premises, the same could not be put forth by the counsel for the respondent. None of the documents attached and discussed above illustrates the possession of the plaintiff in the premises under dispute. The plaintiff claims that he is tenant in the premises. If it is so in his pleadings he nowhere details on which date, month or year he came into possession of the shop as tenant and states that 15 years prior to this, there is neither any written rent note to prove this tenancy, nor proof of payment of any rent by way of rent receipts or bank payments including cheque draft etc. Further-more if the plaintiff is running business, there is nothing suggestive to show that his premise was given licence under the Shops and Commercial Establishment Act or any bills of purchase of raw material, sale of finished goods, proof of the firm paying sales tax/GST etc. and receipts regarding making

payment of electricity bills. The Court has posed a question to the respondent counsel any such document which could suggest reasonably acceptable factum of this tenancy or occupation of the premises by the plaintiff, the counsel for the respondent was unable to do so. Mere photograph of a board carrying inscription Jagdambe Industries would not suffice the purpose that it is owned by the plaintiff or he was in possession of the same as a tenant. The only semblance of evidence that has come about is agreement Ex. P14 purported to be between the two made on 5.6.2008 whereby it is shown that on payment of Rs 60,000/- the shop has been mortgaged to the plaintiff by the defendant. Firstly, it is well settled proposition of law that a mortgage deed needs to be registered in terms of Section 17 of the Registration Act and the document Ex. P14 though exhibited is never shown proved to have been registered nor it is illustrative from the same that after its alleged execution on 5.6.2008, the same was in operation for one year and after 4.6.2009 on receipt of the payment possession shall be handed over to the defendant/Gurcharan Singh. It is nowhere the case of the plaintiff in his plaint or evidence regarding this plea of mortgage and it is belatedly taken up at this stage in the appeal of the respondent and therefore, cannot be legitimately accepted when it was not the stand

of the plaintiff before the trial court. The worth of this document in the absence of any corroborative evidence does not help the case of the plaintiff upon whom a heavy onus and burden lies to establish his case which he has failed to do so. The impugned findings of the trial court on clear perusal shows that the court below merely on the stand of the plaintiff had decreed the suit when the court concedes to the fact that the plaintiff is unable to produce any document through which the possession of the suit property was given to him nor had brought on record any receipt showing that the plaintiff was making payment of the rent to the defendant. The court had placed much heavy reliance on the documents of the police regarding alleged tress passing and theft claimed to have been committed by the defendant in the alleged shop of the plaintiff but sad enough to observe that the same cannot be taken up as a cogent and reliable legitimate legal piece of evidence. The principle as has been enunciated in the case of **Nomi Singh and another** (supra) do not stand satisfied by the plaintiff which could have shifted the onus to rebut the case of the plaintiff upon the defendant. The impugned findings certainly are inherently unsubstantiated on the records by the legal evidence and merely on presumption, the court has driven the conclusion decreeing suit of the plaintiff. The impugned order

certainly is wrong interpretation of the evidence and the law and therefore, the findings on the issues so returned. In the light of what has been detailed and discussed above, the impugned judgment and decree needs to be set aside by way of acceptance of the instant appeal thereby setting aside the impugned judgment and decree by allowing the present revision petition.

January 21, 2020
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No