

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

RSA No. 64 of 2021 (O&M)

Date of Decision: September 07 , 2021

Naranjan Singh

..... Appellant(s)

Versus

Rattan Lal

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Shantanu Bansal, Advocate for the appellant.

LISA GILL, J.

Appellant-defendant has preferred this appeal challenging judgment and decree dated 27.03.2017, passed by learned Additional Civil Judge (Senior Division), Naraingarh as well as judgment and decree dated 28.02.2020, passed by learned Additional District Judge, Ambala.

Brief facts necessary for adjudication of the case are that plaintiff/respondent filed a suit for possession of land as described in the plaint and for mandatory injunction, directing the defendant/appellant to pay a sum of Rs.4,65,000/- i.e. Rs.3,15,000/- as mesne profits for enjoying the fruits of the land from 17.02.1993 till date and Rs.1,50,000/- as litigation expenses incurred by plaintiff. It is pleaded that Smt. Katto Devi, widow of Puran Singh was owner in possession of land measuring 7 Kanals 15 Marlas i.e. land in dispute. This land came to Katto Devi from her husband by virtue of civil court decree dated 27.04.1991 and mutation no.1728 was sanctioned in her favour on the basis of this decree. However, defendant/appellant managed to obtain a judgment and decree dated 17.02.1993 in Civil Suit

No.463/1993 in his favour by reflecting Katto Devi to be his maternal grandmother. Defendant is further alleged to have got the revenue entries changed in his favour as a co-sharer. Plaintiff claimed title to the property on the basis of registered Will dated 28.01.1999.

Defendant/present appellant contested the suit while taking preliminary objections of the suit being time barred, not maintainable and hit by provisions of Section 10 CPC and barred by Order 2 Rule 2 CPC. Appellant claimed that he was a tenant under the husband of Katto Devi but he continued to serve Katto Devi throughout her life. Judgment and decree dated 17.02.1993 in his favour was set aside and defendant did not get any relief from the Hon'ble Supreme Court as well. It is thus pleaded that he continued to be in possession merely as a tenant and not as an owner as the judgment and decree in his favour was set aside and dismissal of his suit upheld right up to the Hon'ble Supreme Court. Relationship of the defendant with Katto Devi is pleaded to have reverted back to the original relationship i.e. of landlord & tenant, therefore, the civil court would have no jurisdiction to entertain the suit in question. Replication was not filed.

Following issues were framed by the learned trial Court on the basis of the pleadings:-

- i. Whether the plaintiff is entitled to a decree for possession as prayed for? OPP.
- ii. If issue no.1 is proved, whether the plaintiff is entitled to a decree for mandatory injunction as prayed for? OPP
- iii. Whether the plaintiff has not come in the Court with clean hands and has concealed the true and material facts from the Court? OPD.
- iv. Whether the suit of the plaintiff is not maintainable in the present form? OPD
- v. Whether the plaintiff has got no locus standi to file the present suit? OPD
- vi. Relief.

Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances of the case decreed the suit to the effect that the plaintiff was held to be the owner of the suit property and entitled to possession thereof. Learned trial Court observed that judgment and decree dated 17.02.1993, on the basis of which defendant was claiming title to the property, was admittedly set aside by the learned ADJ, Ambala on 20.02.2008 and the same was upheld right up to the Hon'ble Supreme Court. Civil suit, subsequent mutation in favour of the plaintiff on the basis of registered Will dated 28.1.1999 was referred to and while deciding issues no.1 and 2 it is specifically observed by the learned trial Court that, *"In view of judgment passed by Hon'ble High Court in which Smt. Katto Devi was declared to be owner of the suit property consequent to which the plaintiff became its owner by virtue of the unchallenged Will in his favour, these issues are decided in favour of plaintiff and plaintiff is entitled to possession over the suit property."* Learned trial Court decreed the suit to the effect that plaintiff is the owner of the suit property as mentioned in the head note.

Appeals were preferred by the defendant/present appellant as well as the plaintiff challenging the judgment and decree dated 27.03.2017 with the plaintiff claiming modification of the relief and present appellant seeking dismissal of the plaintiff's suit in toto. Appeal preferred by the present appellant/defendant was dismissed by learned Additional District Judge, Ambala, vide impugned judgment and decree dated 28.02.2020 and appeal filed by the plaintiff was allowed to the effect that the plaintiff was

held entitled to possession of the suit property though benefit of mesne profit was denied. Aggrieved from dismissal of his appeal, defendant has filed this regular second appeal.

Learned counsel for the appellant argues that both the learned Courts below have grossly erred in law and on facts in passing the impugned judgments and decrees. It is vehemently argued that once decree dated 17.02.1993 was set aside, relationship between the present appellant/defendant and Katto Devi reverted to that of landlord and tenant. Moreover, suit in question was barred by limitation as well as in terms of Order 2 Rule 2 CPC. Plaintiff, it is submitted, could very well have sought the relief of possession in the earlier suit instituted by Katto Devi. Learned counsel has relied upon judgment of the Hon'ble Supreme Court in ***M/s. Virgo Industries (Eng.) Pvt. Ltd. Vs. M/s. Venturetech Solutions Pvt. Ltd. 2013(1) SCC 625***. It is thus prayed that this appeal be allowed. Judgments and decrees passed by both the Courts below be set aside.

I have heard learned counsel for the appellant and have gone through the record of the case, which was requisitioned.

There is no dispute that property in question originally belongs to Smt. Katto Devi, widow of Puran Singh. Husband of Katto Devi suffered a decree dated 27.04.1991 in her favour and mutation no.1728 was sanctioned in her favour. Admittedly, defendant secured a decree dated 17.02.1993 against Katto Devi. Said decree was challenged by Katto Devi by filing a suit for declaration to the effect that she is the owner in possession of the property in question and that judgment and decree dated 17.02.1993 and the subsequent mutation sanctioned on its basis are illegal,

null & void and ineffective qua her rights and title. Suit filed by Katto Devi was dismissed by the learned trial Court on 02.11.2006, however, appeal preferred by Katto Devi was allowed by learned Additional District Judge, Ambala vide judgment and decree dated 20.02.2008 (Ex.P10), which was upheld by this High Court on 25.01.2010 in RSA-2409-2008. The matter attained finality with dismissal of the present appellant's plea before the Hon'ble Supreme Court. It is noticed that Katto Devi had passed away during pendency of the suit before the learned trial Court and the plaintiff/respondent was impleaded as the legal representative of Katto Devi on 14.03.2001. Learned Additional District Judge, Ambala in judgment dated 20.02.2008 (Ex.P10) has specifically observed that the respondent/plaintiff namely Rattan Lal son of Sain Dass shall be at liberty to get his right determined by way of filing a separate suit on the basis of the registered Will dated 28.01.1998 in his favour, if so advised. It is in this situation that Katto Devi's suit for declaration to the effect that judgment and decree dated 17.02.1993 be declared illegal, null & void, ineffective and inoperative qua her rights and title over the suit property was decreed and the defendant was restrained from alienating the suit property in any manner. Thereafter, present suit for possession was filed by the plaintiff claiming to be the legal heir of Katto Devi on the basis of registered Will dated 28.01.1999 executed by Katto Devi in his favour. It is pertinent to note at this stage that registered Will dated 28.01.1999 in favour of plaintiff has not been questioned and admittedly the appellant filed a suit for permanent injunction against the plaintiff for restraining him from selling, alienating or taking forcible possession of the suit property. Said suit was admittedly

dismissed in default on 10.08.2011 (Ex.P9). Thus it cannot be held that present suit is not maintainable.

Moreover, it is a matter of record that the defendant/appellant while deposing as DW1 has stated that mutation in respect of the suit property had been entered in his name in the capacity of an owner and not as a tenant and moreover since 1993 he never paid any Batai (lease) to either Katto Devi or any other person. Therefore, it has rightly been held by the learned Courts below that defendant cannot claim himself to be a tenant under Katto Devi merely by virtue of decree dated 17.02.1993 being set aside. DW3 Kartar Singh in his cross-examination in contradiction to the averment in his affidavit has stated that suit property is in possession of the defendant/appellant in the capacity of an owner. It is indeed not open to the appellant/defendant to take vacillating stands regarding his possession as an owner or tenant at different points of time merely to suit his purpose. Primary ground raised by defendant/appellant that suit filed by the plaintiff is not maintainable as the Civil Court has no jurisdiction to try the matter as he was merely a tenant of the suit property has been rightly negated. Accepting such an argument would amount to affording a premium on the conduct of the appellant.

Learned trial Court has rightly decreed the suit filed by the plaintiff to the effect that he is owner of the suit property while holding him entitled to possession over the suit property. Decree to this effect was, however, not passed. The same has been rightly rectified by the learned Additional District Judge, Ambala vide judgment dated 28.02.2020.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 27.03.2017, passed by learned Additional Civil Judge (Senior Division), Naraingarh as well as judgment and decree dated 28.02.2020, passed by learned Additional District Judge, Ambala, which calls for any interference by this Court in second appeal.

In my considered opinion, no question of law, much less a substantial question of law arises for adjudication in this appeal. Both the learned courts below have rendered findings of fact against the appellant on a wholesome and proper appreciation of evidence on record, which brooks no interference.

No other argument has been raised.

Accordingly, this regular second appeal is dismissed with no order as to cost.

Pending application/s, if any, is/are decided accordingly.

September 07, 2021
Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No