

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

RSA-195-2021 (O&M)
Date of decision: 08.04.2021

MUKESH KUMAR

...Appellant

Versus

RAVINDER GOEL AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Akshay Jindal, Advocate for the appellant.
Mr. RK Gupta, Advocate for the caveator.

ANIL KSHETARPAL, J.

The plaintiff-appellant has filed an appeal against the judgment passed by the learned Additional District Judge, Panipat on 26.02.2021 while reversing the judgment passed by the learned Trial Court. The parties are being referred to their status in the suit.

The plaintiff filed a suit for grant of decree of permanent injunction restraining the defendants from interfering in his peaceful possession over the suit property. It may be noted here that the plaintiff and defendant No.1 are brothers whereas defendant No.2 who died during the pendency of the first appeal was their mother. It is undisputed that Smt. Angoori Devi, the mother of the parties, was the owner of the property in dispute. The plaintiff claims that his mother late Smt. Angoori Devi had leased 4 kanal land to him vide lease deed dated 06.12.2006 for a period of 20 years @ Rs.7000/- per month which was also got notarized. The plaintiff

claims that he is in settled possession of the land and therefore, the defendant should be restrained. The defendant filed a written statement claiming that the suit property is in his physical possession and the plaintiff has no concern in the same. The defendant No.1 also claims that Smt. Angoori Devi vide a registered transfer deed dated 13.10.2014 transferred the ownership of the property to defendant No.1.

On framing of issues, the parties were permitted to lead evidence. The plaintiff himself appeared as PW1 and produced on record a copy of the sale deed, lease deed, site plan, registration certificate, TIN number, cross cheque and photographs. He also produced various other documents which were not proved. On the other hand, defendant No.1 examined himself apart from examining Hemant Kumar, Assistant Registration Clerk.

Learned Trial Court, on appreciation of evidence, decreed the suit simply on the basis of the lease deed dated 08.12.2006. It was held that since the lease deed is proved therefore, the plaintiff being in settled possession cannot be dispossessed except in due course of law.

Defendant No.1 filed first appeal which has been accepted by the learned First Appellate Court while reversing the judgment passed by the learned Trial Court.

Learned First Appellate Court has given the following three reasons to reverse the judgment of the learned Trial Court:-

1. The lease deed dated 08.12.2006 is not registered and therefore, not admissible in evidence in view of Section

17 of the Registration Act, 1908 (in short 'the Act').

2. There is no evidence of monthly payment of rent/lease money by the plaintiff to late Smt. Angoori Devi or defendant No.1 who became owner pursuant to a registered transfer deed dated 13.10.2014.

3. The plaintiff, in the affidavit dated 22.08.2012, has admitted that he has become partner in the Goyal Rice and General Mills, situated at village Tahar, District Panipat, to the extent of 20% share and now he has no share or right in the land measuring 2400 sq. yards which was owned by his mother and adjoins the aforesaid Goyal Rice and General Mills. The plaintiff in cross-examination admitted that the leased property Ex. P2 is the same property which belongs to his mother and he has no concern with the same.

Learned counsel representing the appellant has repeatedly submitted that the plaintiff is in settled possession and therefore, even if the lease deed is not admissible in view of Section 17 of the Act, however, still it can be looked at for collateral purpose i.e. for assessing the nature and character of possession of the lessee. He, hence, submits that the learned First Appellate Court erred in totally overlooking the document. In support of his first argument, he relies upon the judgment passed by the Hon'ble Supreme Court in **Sevoke Properties Ltd. vs. West Bengal State Electricity Distribution Co. Ltd., Civil Appeal No. 3873 of 2019, decided on 11.04.2019.** He further submitted that the learned First Appellate Court has not dealt with the reasons given by the learned Trial Court and as such, the judgment passed by the learned First Appellate Court cannot be

sustained.

On the other hand, learned counsel for the respondent while drawing the attention of the Court to an affidavit dated 22.08.2012 submits that the appellant himself admits that he has no concern with the property in dispute. He submits that in view of the aforesaid affidavit, the appeal is liable to be dismissed.

After having heard learned counsel for the parties at considerable length, this Court now proceeds to adjudicate upon the dispute.

Annexure A1 is the copy of the alleged lease agreement executed by late Smt. Angoori Devi in favour of the plaintiff Mukesh Kumar. On careful reading thereof, it is apparent that the alleged lease deed is with respect to two small portions. The first shed is with respect to an area of 35ft x 70ft whereas the second shed is measuring 35ft x 35ft and includes a machine shed. This lease deed is for a period of 20 years. It is the case of the defendant that the aforesaid lease deed was executed only for enabling the plaintiff to get a sale tax number. It is the pleaded case of the defendant No.1 that the plaintiff never came in actual physical possession of the property.

It is apparent that there is no evidence of monthly payment of the rent. Apart from this, the plaintiff has sworn in affidavit to the effect that he has become partner in Goyal Rice and General Mills to the extent of 20% and he has no right or title in the adjoining land measuring 2400 sq. yards owned by late Smt. Angoori Devi. If the plaintiff was in possession as a

lessee, he would not have executed an affidavit to this effect. Still further, the learned First Appellate Court has noticed that the plaintiff while appearing in the evidence has admitted that defendant No.1 is the owner of the said property and he has no concern with the same. Thus, the plaintiff has admitted the possession of the defendant No.1. Still further, apart from the lease deed, there is no evidence to prove that the plaintiff is running his factory/industry from the property in dispute. No doubt, the plaintiff has produced the copy of the registration certificate as well as TIN number, however, that would not itself prove that the plaintiff is running a industry from the disputed piece of land. The plaintiff has neither examined any neighbour in the evidence nor produced any other cogent evidence to prove his possession. This Bench has carefully gone through the judgment passed in **Sevoke Properties (supra)**. In the aforesaid case, the Hon'ble Supreme Court held that an unregistered lease deed can be seen for collateral purpose to assess the nature and character of lessee. However, in the present case, the plaintiff has failed to prove his possession.

As regards the next argument of learned counsel for the appellant, it may be noted that the learned Trial Court has granted decree of injunction only on the ground that the lease deed has been executed. Learned First Appellate Court has held that no doubt, a lease deed has been executed, however, there is no evidence that in furtherance of the deed, the plaintiff came into the physical possession of the property and thereafter continued in possession of the said property. Still further, in the year 2012,

the plaintiff himself has sworn an affidavit admitting that he has no right or title in the land which was owned by his mother late Smt. Angoori Devi.

Keeping in view aforesaid facts, this Bench does not find any good ground to interfere with the findings of fact arrived at by the learned First Appellate Court.

Consequently, the appeal is dismissed.

08.04.2021
ashok

(ANIL KSHETARPAL)
JUDGE

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