

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

RSA No.825 of 2022 (O&M)

Date of Decision: 25.05.2022

Bishambhar Dayal Sharma

.....Appellant

Versus

Babu Lal Sharma

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Abhimanyu Singh, Advocate
for the appellant.

Mr. Amit Jain, Advocate
for the respondent.

MEENAKSHI I. MEHTA, J. (Oral)

Feeling aggrieved by the judgment and decree dated 05.07.2019 passed by learned Civil Judge (Junior Division), Gurugram (for short 'the trial Court') whereby the civil suit filed by the respondent-plaintiff (here-in-after to be referred as 'the plaintiff') for seeking a decree for mandatory injunction directing the appellant-defendant (here-in-after to be referred as 'the defendant') to hand over the vacant possession of the suit property to him or in the alternative, a decree for the possession of the said property along-with *mesne* profit in respect of the same @ Rs.10,000/- per month, was partly decreed while granting the relief of mandatory injunction as well as by the judgment and decree dated 04.01.2022 handed down by learned Additional District Judge, Gurugram (for short 'the Lower Appellate Court') dismissing the appeal preferred by him (defendant) to

assail the above-said judgment and decree as passed by the trial Court, the defendant has filed this appeal.

2. The plaintiff filed the said civil suit against the defendant while averring that he was owner in possession of the suit property by virtue of the sale deed dated 15.04.2022 and had also raised construction thereon. Since the said property was lying vacant, therefore, he allowed the defendant, his brother, to use the same as licensee for the business as well as residential purposes and at that time, the defendant had undertaken to vacate this property as and when asked to do so. After shifting to Gurugram, he (plaintiff) requested the defendant to vacate the suit property but in vain. The defendant, rather, continued to occupy the said property unauthorisedly and hence, he (plaintiff) was entitled to the *mesne* profits for the use and occupation thereof.

The defendant, in his written-statement, contested the claim of the plaintiff while asserting that in fact, he had paid the entire sale consideration to the plaintiff in good faith so as to facilitate the execution and registration of the sale-deed in respect of the suit property but the plaintiff dishonestly got the sale-deed executed and registered in his own name/favour and when he (defendant) came to know about this fact, he took up the matter with the plaintiff in the presence of family members and the respectables of the society and the plaintiff agreed to execute a transfer deed in his (defendant's) favour qua the said property but failed to fulfil his promise and therefore, the suit deserved dismissal. In his replication, the plaintiff reiterated his earlier stand as taken in the plaint besides

controverting the assertions as put forth by the defendant in his written statement.

3. The parties were put to the trial by framing the issues on 07.05.2018. Both the parties led their evidence, oral as well as documentary, in support of their respective contentions and after appreciating and evaluating their evidence and hearing their learned counsel, the trial Court, vide the impugned judgment and decree dated 05.07.2019, partly decreed the suit by directing the defendant to hand over the vacant possession of the suit property to the plaintiff but declined the relief qua *mesne* profits and the appeal preferred by the defendant to lay challenge to the above-said judgment and decree, has also ended in dismissal.

4. I have heard learned counsel for both the parties in the present appeal and have also perused the file thoroughly.

5. Learned counsel for the defendant (appellant) contends that the defendant had paid the entire sale consideration for purchasing the suit property but the plaintiff got the sale-deed executed and registered in his own favour by misusing the trust and faith reposed by the defendant in him and when the defendant came to know about this fact, he asked the plaintiff to transfer the suit property in his favour and then, the plaintiff agreed to execute a transfer deed in his favour but the plaintiff has not done so and both the Courts below fell in error in accepting the claim of the plaintiff and hence, the impugned judgments and decrees are not legally sustainable and are liable to be set-aside.

6. Per contra, learned counsel for the plaintiff (respondent) argues that the defendant has concealed the material facts from the Court and it was, in fact, the plaintiff, who had purchased the suit property and had also paid the sale consideration for the same and the defendant was simply allowed to occupy the said property as a licensee and therefore, the plaintiff was entitled to get back its possession and it being so, the impugned judgments and decrees are perfectly legal.

7. As regards the plea that the defendant had paid the sale consideration in respect of the suit property but the plaintiff had dishonestly got the sale-deed in respect of this property executed and registered in his own favour, it is worth-while to mention here that in para No.14 in its judgment, the trial Court has categorically observed that the defendant had admitted during his cross-examination that he had got the mutation in respect of the suit property incorporated through Patwari Sushil Kumar and the Lower Appellate Court has also made specific observations in this regard in para No.15 of its judgment and this fact, in itself, belies his (defendant's) above-said plea.

8. Further, so far as the above-discussed plea of the defendant to the effect that the plaintiff had agreed to execute the transfer-deed qua the suit property in his favour, is concerned, it is again pertinent to point it out here that the Lower Appellate Court, in para No.16 of its judgment, has observed that the defendant did not examine any person from his family to substantiate this plea.

9. As a sequel to the fore-going discussion, it follows that the

impugned judgments and decrees passed by both the Courts below do not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the present appeal, being *sans* any merit, stands dismissed.

25.05.2022
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(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>