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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1194-2022 (O&M)
Date of Decision:14.07.2022

Sunita

.. Petitioner

Vs.

Samay Singh Chaudhary

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Jaideep Verma, Advocate for the petitioner.

...

Manoj Bajaj, J. (Oral)

CM-4472-C-2022

This application is for preponement of main appeal as the Executing Court has issued warrants of possession against appellant for 17.07.2022.

Application is allowed and the date of hearing is pre-poned to today.

RSA-1194-2022 (O&M)

The appellant/defendant has preferred this appeal against the judgment and decree dated 17.05.2022 passed by appellate Court in Civil Appeal No.91/28.04.2022, thereby affirming the judgment and decree dated 28.11.2018 passed by Civil Judge, (Senior Division), Rupnagar in Civil Suit No.102/30.08.2016, decreeing the suit for vacant possession by way of ejectment, filed by the respondent (plaintiff).

Briefly, the facts of the case are that plaintiff (Samay Singh Chaudhary) brought a suit for possession by way of ejectment against appellant/defendant in respect of 1st floor of house situated in Ward No.7 at

Chamkaur Sahib, based upon title, and pleaded that in the year 2005, the defendant approached the plaintiff for taking the possession of first floor of his house consisting of three rooms set, including verandah, and the same was delivered to her on rent @ Rs.2,000/- p.m. The said agreement between the parties was oral and was entered into in the presence of Harmesh Chand, Jaswant Singh, Harchand Singh and Mangat Ram etc. The defendant had agreed to make the monthly payment by 10th of every month, but after January, 2008, nothing was paid. The plaintiff claimed his ownership over the property in question on the basis of a sale deed dated 13.12.1976 (Ex.P-1) executed by the predecessor-in-interest (Narati widow of Paras Ram) in his favour, but the defendant disputed his ownership, who even despite several requests for vacating the house, never vacated the same and started damaging it by altering of the portion in her possession. The defendant was served with a legal notice dated 22.04.2016, thereby asking her to vacate the suit property within a period of one month, but neither she sent any reply nor vacated the house and with this cause of action, the plaintiff prayed for decree for possession by way of ejectment and also prayed for recovery of amount w.e.f. June, 2013 to July, 2016 for illegal use and occupation of the house.

The suit was contested by the respondent, who filed written statement and claimed that she is residing in the suit property for the last 40 years and the plaintiff has no concern with the same. It was specifically denied that the relationship of tenant and landlord exists between them, and according to her, the title deed relied upon by plaintiff is fabricated, as the property is situated within lal lakir. The ownership of the previous owner, namely, Narati was also disputed, by defendant, who further refuted all the

averments in the plaint and claimed herself to be the owner of property, and in the end prayed for dismissal of the suit.

The plaintiff in order to rebut the stand of the defendant filed replication and reiterated his stand contained in the plaint.

After completion of pleadings, the Civil Judge (Sr. Divn.), Rupnagar vide order dated 28.11.2018, in all, framed five issues, and thereafter, the parties adduced their respective evidence. The plaintiff in support of his case, examined three witnesses and adduced documentary evidence i.e. sale deed dated 3.12.1976 (Ex.P1), legal notice dated 22.04.2016 (Ex.P2), postal receipt (Ex.P3), acknowledgment Ex.P4, original receipt of bill dated 10.02.2016 (Ex. P5), photocopy of receipt of bill dated 31.12.2013 (Ex.P6), site plan (Ex.P7), copy of judgment dated 22.12.2016 (Ex.P8), copy of decree sheet (Ex.P9), whereas defendant/appellant examined herself as DW1 and Gurmeet Singh as DW2.

After considering the pleadings and evidence on record, the Civil Judge (Sr. Divn.), Rupnagar returned findings on material issue No.1 in favour of plaintiff and against the defendant, thereby decreeing the suit on 28.11.2018.

Dissatisfied with the judgment and decree dated 28.11.2018 passed by the Civil Judge (Sr. Divn.), Rupnagar, the defendant (appellant) preferred appeal bearing No.91/2022, before Addl. District Judge, Rupnagar, however, the same was also dismissed vide judgment and decree dated 17.05.2022. Hence this regular second appeal.

Learned counsel for the appellant/defendant has argued that the defendant had previously brought a suit seeking permanent injunction against the respondent/plaintiff, who was facing forcible dispossession and

the said suit was decreed in her favour vide judgment and decree dated 22.12.2016 (Ex.P8) and (Ex.P9), respectively, and since there existed relationship of tenant and landlord, the suit was not maintainable by virtue of the provisions of East Punjab Urban Rent Restriction Act, 1949. Learned counsel has argued that it is specific pleading by the plaintiff himself that the defendant was inducted as a tenant at a monthly rent of Rs.2000/-, therefore, the suit in question could not be decreed. He has further argued that the plaintiff has set up title on the strength of sale deed executed by Narati on 13.12.1976, whereas there is nothing on record to show that indeed Narati was the owner of the suit property, who could further validly pass on the title. He submits that the impugned judgment and decree passed by the Civil Judge (Sr. Divn.), Rupnagar and upheld by Appellate Court are not based upon proper appreciation of evidence, therefore, the same deserve to be set aside.

After hearing the learned counsel and examining the case file, this Court finds that no doubt, the plaintiff in his pleadings had mentioned that initially, first floor of the property in question was given to the defendant on rent @ Rs.2,000/- p.m., but the said stand was categorically denied by the defendant, who claimed herself to be the owner of the property, as she was residing there for the last 40 years. She had even disputed the ownership of the plaintiff as well as the sale deed (Ex.P1), and never raised objection in the written statement in respect of the maintainability of the suit, much less by virtue of the applicability of East Punjab Urban Rent Restriction Act, 1949. On the contrary, she claimed her title in the suit property, whereas, in support of her case, she failed to adduce any cogent evidence, so, the trial Court decreed the issue in favour

of plaintiff by relying upon the sale deed (Ex.P-1) produced by him.

Further, a perusal of the grounds of appeal, which are on record also shows that no such objection relating to the maintainability of the suit on the strength of her tenancy rights was raised or pressed because she took candid stand in her evidence that she had purchased the property from plaintiff, but failed to lead any evidence to prove her title.

Thus, this Court has no hesitation in holding that both the Courts after carefully examining and correctly appreciating the evidence have returned the findings in favour of the respondent and against the appellant. The objection relating to the maintainability of the suit in view of East Punjab Urban Rent Restriction Act, 1949 is untenable in view of the '*doctrine of estoppel*', as the defendant/appellant is taking conflicting stand, by blowing hot and cold in the same breath.

No other argument was raised.

Resultantly, this Court finds that the appeal does not involve any substantial question of law, therefore, the same fails and is dismissed.

14.07.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No