

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

RSA-913-1990(O&M)

Date of order:-30.5.2023

Shashi Chander

...Appellant

Versus

Ajit Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vaibhav Sharma, Advocate
for the appellant.

None for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Jai Gopal and Shashi Chander sons of Sh.Maharaj Krishan, residents of Pehowa, Tehsil Pehowa, District Kurukshetra had brought a suit against defendant Ajit Singh son of Sh.Surain Singh, resident of Pehowa, District Kurukshetra, seeking possession of the shop in suit.

2. According to the version of the plaintiffs, they had purchased the shop vide a registered sale deed dated 4.4.1982 read with amended sale deed dated 1.3.1983; the shop was comprised in khasra No.70/30 situated within the revenue estate of village Pehowa, Tehsil Pehowa; mutation No.2087 with regard to purchase of shop by the plaintiffs had

been sanctioned in their favour; defendant came into unauthorized possession of the shop somewhere in the month of August/September, 1983; the possession of the defendant is unauthorized without any authority and he has no right to retain the same; when the defendant refused to hand over the possession of the shop in dispute to the plaintiffs despite repeated requests and demands, the plaintiffs had brought the suit in question.

3. On notice, the defendant appeared and filed a written statement contesting the suit contending that vendor of the plaintiffs was not the owner of the property, therefore, he was not legally competent to transfer any title in favour of the plaintiffs; the shop in question had been constructed by the defendant round about in the year 1956 and since then he has been in possession thereof as owner; the shop was in possession of the plaintiffs under the defendant as tenant; the plaintiffs were got ejected by the defendant after a prolonged litigation in execution of the ejectment order in case titled 'Ajit Singh Versus Shashi Bhushan' passed by Rent Controller, Kaithal; the plaintiffs had preferred an appeal against the order of Rent Controller, Kaithal, which had been dismissed; thereafter the plaintiffs had filed a suit for permanent injunction regarding the suit property, which was however dismissed as withdrawn on 14.11.1983 from the Court of Sub Judge, Kaithal, therefore the suit is barred under Order 23 CPC. The defendant further contended that Lajja Ram son of Manohar Dass, resident of Pehowa had filed a suit for possession regarding this property along with other properties against Mehar Singh and others, which was dismissed on 16.1.1979; in that suit Jai Gopal – present

plaintiff No.1 was defendant No.27, Satpal vendor of the suit property of the plaintiffs was defendant No.8 and the present defendant was defendant No.18, therefore the suit is barred by the principle of resjudicata. According to the defendant the present plaintiff No.1 Jai Gopal had filed a interpleader suit on or before 19.4.1976 against Lajja Ram and others; in that suit, present defendant was defendant No.4. Taking various other legal objections, the defendant contended that he has been in open regular continuous possession to the knowledge of all including the owners for last more than 20 years through his tenants. In the end, the defendant prayed for dismissal of the suit.

4. The plaintiffs had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are owners of the suit property? OPP.
2. Whether the possession of the defendant on the suit property is unauthorised? OPP.
3. Whether the present suit is misconcede and does not lie as alleged? OPD.
4. Whether the present suit is barred by the principle of resjudicata? OPD.
5. Whether the present suit is barred under Order 23 Rule 3 CPC? OPD.
6. Whether the present suit is liable to be stayed under Section 10 of CPC as alleged? OPD.
7. Whether the defendant has become owner by way of adverse

possession? OPD.

8. Whether the suit is not properly valued for the purposes of Court fee and jurisdiction? OPD.

9. Relief.

5. The parties led evidence in support of their respective claims.

6. After hearing learned counsel for the parties, the trial Court of Sub Judge Ist Class, Kaithal by giving issue-wise findings dismissed the suit of the plaintiffs with costs. This was so done vide judgment and decree dated 26.10.1988.

7. Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Kurukshetra, which was assigned to Additional District Judge, Kurukshetra, who vide judgment and decree dated 21.8.1989 dismissed the same upholding the judgment and decree passed by the trial Court.

8. Still feeling dissatisfied, the plaintiff No.2 Shashi Chander knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit be decreed.

9. Notice of the appeal was issued to the respondents, who had initially put in appearance through counsel but subsequently they stopped appearing.

10. I have heard learned counsel for the appellant besides going through the record.

11. In this case both the Courts below had not found any merit in the case of the plaintiffs and rather arrived at the conclusion that plaintiffs

are not owners of the suit property and possession of the defendant over the suit property is not unauthorized, rather he had taken the possession in pursuance of warrants of possession issued by the competent Court in execution proceedings. In view of the earlier litigation, the suit was found to be barred under Order 23 Rule 3 CPC. The plea of adverse possession taken by the defendant was also accepted. It has been observed that since it is not established that Lajja Ram was owner of the property in suit and Satpal vendor of the plaintiffs had obtained it under the Will, therefore, the plaintiffs could not establish their ownership of the suit property. It being so, they had no right to seek possession thereof from the defendant.

12. I find that the verdict given by the Courts below are based upon proper appreciation and correct interpretation of law. Both the Courts had rejected the claim of the plaintiffs. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees. Those judgments and decrees are upheld.

13. No substantial question of law or fact arises in this appeal.

14. The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

30.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No