

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1924-1992(O&M)

Reserved on:- 21.09.2023

Pronounced on:- 19.10.2023

Surinder Parkash Dhir and another

....Appellants

Versus

Khalil Ahmed deceased through his legal heirs

...Respondent

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Sunil Chadha, Sr. Advocate with
Ms. Kashish Aggarwal, Mr. Rohit Mittal and
Mr. Ritvik Sobti, Advocates for the appellants.

Mr. Gurdial Singh Jaswal, Advocate for respondent.

AMARJOT BHATTI, J.

1. The appellants-Surinder Parkash Dhir and Antaryami have filed regular second appeal against impugned judgment and decree dated 30.03.1992 passed by Additional District Judge, Chandigarh vide which appeal preferred against judgment and decree dated 17.03.1987 dismissing the suit of the plaintiff-Vishwa Mittar Dhir passed by Sub Judge 1st Class, Chandigarh, was dismissed.

2. As per the facts of the case, Shri Vishwa Mittar Dhir-plaintiff (now appellants being his legal heirs) had filed suit for recovery of Rs.18,000/- on account of the damages for the illegal and unauthorised use and occupation of one room in the front W.C. and bath combined, of House No.1077/27B, Chandigarh @ Rs.500/- per month from 22.12.1980 to 22.12.1983 against the defendant-Khalil Ahmed. On 27.08.1976, the

defendant-Khalil Ahmed illegally entered into the said room situated towards the market of Sector 27-C, Chandigarh. The market rent of the said room was more than Rs.500/- per month. The defendant continuously occupied the said room in an illegal manner and had not vacated the same inspite of repeated requests made by the plaintiff. Ultimately, the plaintiff had filed the present suit .

3. Notice of the suit was given to the defendant. He had filed written statement by taking the stand that the suit was not maintainable in the present form. The plaintiff had concealed material facts from the Court. The defendant alleged that he was a partner of the plaintiff in the business and thereafter a dispute arose and various cases were filed between the parties. Ultimately on 08.12.1982, the parties settled all their disputes and the plaintiff entered into agreement to sell, the house in question i.e. House No.1077, Sector 27B, Chandigarh for a consideration of Rs.2 lacs with the defendant. As per the agreement, the defendant had paid Rs.1,43,630/-out of total sale consideration of Rs.2 lacs and he had to pay Rs.56,370/- at the time of registration of sale deed. As per the agreement to sell dated 08.12.1982, no rent etc. was fixed and it was admitted that the property was in possession of the defendant. The plaintiff filed a frivolous suit for possession against the defendant which was pending. The possession over the demised premises was lawful and the suit of the plaintiff was against law and facts and the same may be dismissed with cost.

4. In replication, the averments in the written statement were denied and those of plaint were reiterated. From the pleadings of the

parties, following issues were framed on 01.12.1984 and some additional issues were also framed on 05.12.1985:-

1. Whether the plaintiff is entitled to Rs.500/- per month as damages for occupation of the premises by the defendant for the period from 22.12.1980 to 22.12.1983? OPP
2. Whether the suit is not maintainable in the present for? OPD.
3. Whether the suit is barred by Order 2 Rule 2 CPC? OPD.
4. Whether the suit is liable to be stayed as alleged in preliminary objection No.5 of the written statement? OPD.
5. Whether the plaintiff has no *locus standi* to file the present suit? OPD.
6. Whether the defendant is entitled to special cost? If so, to what amount? OPD.
7. Whether plaintiff entered into an agreement dated 08.12.1982 to sell the house in dispute? OPD.
8. If issue No.7 is proved, whether the defendant was put in possession of the premises in dispute by the plaintiff in part performance of the agreement to sell? OPD.
9. Whether the defendant paid Rs.10,000/- to the plaintiff on 08.12.1982 as earnest money, if not, its effect? OPD.
10. Relief.

5. In order to prove the suit, the plaintiff examined himself as PW1. Thereafter, learned counsel for the plaintiff tendered in evidence Ex.P1 to Ex.P3 and closed the evidence.

6. To rebut the evidence of the plaintiff, defendant-Khalil Ahmed himself stepped into the witness box as DW-1 and examined Jaswant Singh, Clerk as DW-2, N.K.Jain, Document Expert as DW-3, Nizamudin, Contractor as DW-4, Sayadu Din as DW-5, Abdul Hamir as DW-6 and closed the evidence.

7. After hearing the arguments advanced by learned counsel for the parties, the suit filed by Shri Vishwa Mittar Dhir-plaintiff was dismissed vide judgment and decree dated 17.03.1987 passed by the then Sub Judge, 1st Class, Chandigarh. Feeling aggrieved of the aforesaid judgment and decree, Civil Appeal was filed against respondent/defendant, which was also dismissed vide judgment and decree dated 30.03.1992. Feeling aggrieved of this judgment and decree, the appellants being legal heirs of plaintiff have filed regular second appeal.

8. Learned counsel for the appellants being legal heirs of plaintiff argued that the learned Courts below have dismissed the suit as well as the appeal without proper appreciation of the facts and circumstances of the present case. The plaintiff had filed suit for recovery of Rs.18,000/- against the defendant as damages for illegal use and occupation of the house in question at the rate of Rs.500/- per month for the period 22.12.1980 to 22.12.1983. On the other hand, the respondent/defendant has based his claim on the basis of one agreement to sell dated 08.12.1982 allegedly executed by the plaintiff regarding the house in dispute for a consideration of Rs.2 lacs. It is claimed in the written statement that an amount of Rs.1,43,630/- were allegedly paid to the plaintiff by way of adjustment towards the consideration of the house in question and the remaining amount was to be paid at the time of registration of sale deed. The learned trial Court had held the said agreement to sell as a genuine document in a separate suit and on that basis the present suit has been dismissed. Even the appeal preferred by the appellant/plaintiff has been dismissed without proper appreciation of the

evidence on record. The said agreement to sell dated 08.12.1982 Ex.D17 is not a genuine document. Numerous litigation was going on between the parties since long, therefore, there was no occasion for the execution of said agreement to sell dated 08.12.1982 Ex. D-17. The value of the house was more than Rs.8 lacs and there was no reason for him to sell the same for a sum of Rs.2 lacs. The learned Courts below have totally ignored that the respondent had entered into possession of the portion of the house in dispute forcibly, therefore, there is no question of agreement to sell or handing over the possession to the defendant. Basically the suit filed by the plaintiff was dismissed by relying upon the said agreement to sell dated 08.12.1982 Ex. D-17. The Courts below have wrongly relied upon the evidence of the defendant who had examined Sh. N.K.Jain, the document and handwriting expert as DW-3. The said expert was engaged by the defendant, therefore, he was bound to give a report in favour of the party who had hired him. The respondent did not make any effort to get the signatures compared from a Government agency of Handwriting and Finger Print Expert to prove the genuineness of said agreement to sell. The previous litigation has been totally ignored. The plaintiff had filed ejectment petition against the defendant. The said ejectment order was challenged in appeal which was dismissed vide judgment dated 23.01.1980 Ex.P1. The revision against this judgment was also dismissed by the Hon'ble High Court and the plaintiff had obtained possession of his property in execution proceedings. The defendant took illegal possession of the premises in dispute on 27.08.1976 to which he had no right. During this period the plaintiff filed different cases from time to time claiming

arrears of rent which were also decided in his favour. The copies of judgments Ex.P-2 and Ex.P-3 are also ignored while deciding the present case. The stand taken by the defendant was self contradictory as at times he was claiming tenancy and thereafter, he started claiming himself to be a prospective buyer.

The learned counsel for the appellant further pointed out that the learned Courts below wrongly concluded that he would have been entitled to recovery of damages at the rate of Rs.100/- per month for illegal use and occupation of the premises. The rent of the premises in the area was around Rs.800/- to Rs.1,000/- per month but the plaintiff had claimed damages for illegal use and occupation of the house in question at the rate of Rs.500/- per month and on that basis he had filed suit for recovery of Rs.18,000/-. It is prayed that the facts of the case and the evidence on record were not properly appreciated. The plaintiff had stepped into the witness box as PW-1 to prove his version. The evidence led by the plaintiff and the documents proved on record were wrongly ignored and the suit filed by the plaintiff was wrongly dismissed by the trial Court vide judgment and decree dated 17.03.1987 and the appeal was also wrongly dismissed vide judgment and decree dated 30.03.1992. It is prayed that the aforesaid judgments and decrees passed by the Courts below may kindly be set aside by accepting the present regular second appeal and his suit for recovery may be decreed as prayed for.

9. Learned counsel for the respondent argued that the facts of the case and the evidence on record were rightly considered by the Courts below. The execution of agreement to sell dated 08.12.1982 Ex. D-17 was

duly proved on record by leading convincing evidence. Khalil Ahmed the defendant had stepped into the witness box as DW-1 to prove his own version. The said agreement to sell was executed with the intervention of their common friend Shri Subhash Chander who has already expired. Thereafter, the defendant examined Nizamudin one of the marginal witness of this agreement to sell as DW-4. The signatures of Vishwa Mittar – the plaintiff were got compared from a handwriting expert and the same were proved by examining N.K.Jain, document and handwriting expert, Ambala as DW-3. At the time of execution of this agreement to sell, Rs.10,000/- were given by way of earnest money which is mentioned in para No.7 of the said agreement to sell Ex.D17 and separate receipt was issued by the plaintiff which is Ex.D-2. Sayadu Din is examined as DW-5 who confirmed that he had given Rs.10,000/- to the defendant on 04.12.1982. Abdul Hamir, DW-6 had also confirmed the possession of defendant over the property in question. On the basis of aforesaid agreement to sell dated 08.12.1982 Ex. D-17, another suit was decreed in his favour and the sale deed was also executed. Therefore, considering the facts and circumstances of the case and the evidence on record the claim of the plaintiff seeking recovery of Rs.18,000/- as damages for illegal use and occupation of the house at the rate Rs.500/- per month was rightly dismissed and the appeal preferred by him was also rightly dismissed vide impugned judgment and decree dated 30.03.1992. It is prayed that the regular second appeal preferred by the appellants being legal heirs of plaintiff is without merits and the same may kindly be dismissed.

10. I have considered the arguments advanced by learned counsel for both the parties and have gone through the record carefully. In this case Vishwa Mittar Dhir– plaintiff now represented through his legal heirs had filed suit for recovery of Rs.18,000/- against Khalil Ahmed – defendant now respondent through his legal heirs as damages for illegal use and occupation of one room, toilet and bath room part of house No.1077, Sector 27-B, Chandigarh at the rate of Rs.500/- per month from 22.12.1980 to 22.12.1983. The respondent/defendant had denied the claim of appellant/plaintiff on the basis of agreement to sell dated 08.12.1982 which is proved on record as Ex.D-17. In order to appreciate the factual position, the previous litigation which was going on between the parties cannot be ignored. There is copy of judgment dated 23.01.1980 Ex. P-1 in Rent Appeal No.31 of 03.03.1979 titled as Khalil Ahmed Sagar vs. Vishwa Mittar Dhir under Section 15 of East Punjab Rent Restriction Act against ejectment order dated 23.09.1978 passed by the then Rent Controller, Chandigarh which was dismissed with cost and the ejectment order dated 23.09.1978 passed by the Rent Controller, Chandigarh was upheld. During this period Vishwa Mittar Dhir filed suit on 17.09.1977 seeking recovery of arrears of rent for the period 01.09.1974 to 31.08.1977 which was decreed in favour of Vishwa Mittar Dhir vide judgment and decree dated 31.07.1979 which is Ex.P-2. Thereafter, Vishwa Mittar Dhir filed another Civil Suit No.224 of 1982 for recovery of Rs.3,750/- on account of arrears of rent for the period 01.05.1979 to 05.03.1982 which was again decreed vide judgment and decree dated 05.08.1982. Copy of judgment is Ex.P-3. As per the aforesaid litigation, it is clear that Khalil Ahmed was a

tenant in one room, small store room, gallery and one W.C. and bath bearing house No.1077, Sector 27-B, Chandigarh at a monthly rent of Rs.100/- in addition to water and electricity charges. Now it is a case of appellant/plaintiff that the respondent/defendant trespassed and took illegal possession of one room in front of W.C. and bath combined on 07.08.1976. By filing the present suit on 22.12.1983, he is seeking recovery of Rs.18,000/- as damages for illegal, unauthorized use and occupation of the aforesaid premises from 22.12.1980 to 22.12.1983. It is argued by the learned counsel for the appellants that the ejectment order was upheld up to the Hon'ble High Court and he was able to get possession during execution proceedings. The plaintiff Vishwa Mittar Dhir had stepped into the witness box as PW-1 to prove his case. The plaintiff as PW-1 during his cross-examination before the trial Court stated that he knew the defendant Khalil Ahmed for the last 11/12 years. When the cross-examination was conducted on 27.04.1985, he admitted that he was running an industry and for that purpose he had hired workers including the defendant. He further conceded that he had given his premises on rent to the defendant in the year 1974. The plaintiff had denied the execution of agreement to sell dated 08.12.1982 Ex. D-7 which was claimed by the defendant. The defendant had stepped into the witness box as DW-1 to prove his version. He further examined Nizamudin DW4 one of the marginal witness of the aforesaid agreement to sell dated 08.12.1982 Ex.D-17. N.K.Jain, Document and Handwriting Expert, Ambala DW-3 was examined to prove the signatures of plaintiff on the said agreement to sell.

It cannot be ignored that apart from the sole statement of Vishwa Mittar Dhir-PW-1 there is no evidence on record to prove his version. During the course of arguments, learned counsel for the appellants admitted that Khalil Ahmed had filed suit for specific performance of agreement to sell dated 08.12.1982 and the said suit was decreed *ex parte*. He further conceded that he had filed application under Order 9 Rule 13 CPC which was dismissed and the revision against that order was also dismissed. In the case in hand the copy of aforesaid *ex parte* judgment and decree or subsequent orders are not placed on record. The respondents have led independent evidence to prove his version. During the course of arguments, learned counsel for the respondents further pointed out that on the basis of aforesaid decree for specific performance, sale deed was also executed. Therefore, the appellants cannot go behind this decree.

11. The agreement to sell dated 08.12.1982 Ex.D-17 is a detailed document. The contents of this agreement to sell clearly indicates that it was executed with the intervention of their common friend namely Subhash Chander. The agreement to sell indicates that all claims between the plaintiff and the defendant were settled in terms of money pertaining to different period. As per para No.7 of the agreement to sell, the respondent/defendant again paid Rs. 10,000/- towards earnest money and the balance sale consideration of Rs.56,370/- were to be paid at the time of execution of sale deed. Para No.8 and 9 deals with the conditions which were to be fulfilled by vendor before the execution of sale deed. It was rightly held that in case the plaintiff had any claim towards damages for

illegal use and occupation of the house in question for the period 22.12.1980 to 22.12.1983 then the same would have been settled at the time of execution of said agreement to sell dated 08.12.1982 Ex.D-17. There is no reference of any such claim for damages for illegal use and occupation of any part of the house in question. Therefore once the matter was settled between the parties on the basis of agreement to sell dated 08.12.1982 Ex.D-17, now the appellants being legal heirs of plaintiff are estopped from re-agitating the claim for recovery of damages for illegal use and occupation of the premises for the period as referred above.

In light of aforesaid facts and circumstances of the present case, I do not find any reason to interfere in the concurrent finding of both the Courts below. The facts of the case and the evidence on record were rightly appreciated. There is no substantial question of law involved in this case. Therefore, the concurrent findings of both the Courts below are accordingly upheld and the appeal preferred by the appellants being legal heirs of plaintiff is accordingly dismissed.

The records received from the two Courts below be sent back to the concerned quarter.

Pending application(s) if any, also stands disposed of.

19.10.2023
Sunil Devi

(AMARJOT BHATTI)
JUDGE

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