

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.2169 of 2019 (O&M)

Reserved on : 02.02.2023

Date of Decision : 14.02.2023

Roshan Lal Mahajan

....Appellant

VERSUS

Kela Devi and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashish Gupta, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been preferred by the plaintiff-appellant against the judgments and decrees passed by both the Courts below dismissing his suit for permanent injunction.

The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for permanent injunction for restraining the defendant-respondents from dispossessing or interfering in the peaceful possession of the plaintiff-appellant forcibly and illegally except in due course of law. The case set up by the plaintiff-appellant in the plaint was that defendant-respondent No.1 is the owner of the shop in question and that the plaintiff-appellant was inducted by him as a tenant in the month of July 2013 at a monthly rent of Rs.400/- per month and as such the plaintiff-appellant is in possession as a tenant under the defendant-respondent No.1 and was paying rent regularly without getting any receipt thereof. It is further alleged that the defendant-respondents came on 10.10.2013 and tried to forcibly evict the

plaintiff-appellant. The suit was contested by the defendant-respondents. Defendant-respondent No.1 filed his written statement raising the plea that the plaintiff-appellant was not in possession of the shop in dispute. It was further averred that he is neither a tenant nor in possession. A separate written statement was filed by defendant-respondent No.2 wherein it was averred that defendant-respondent no.2 was a tenant under defendant-respondent No.1 but had vacated and vacant possession was handed over to the owner, defendant-respondent No.1. No replication was filed by the plaintiff-appellant.

On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled for the permanent injunction restraining the defendants from dispossessing or interfering in the shop in question, as detailed in the headnote of the plaint ? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
3. Whether the plaintiff has no *locus standi* to file the present suit ? OPD
4. Whether the plaintiff has no cause of action to file the present suit ? OPD
5. Whether the plaintiff has not come to the court with clean hands ? OPD
6. Relief.

The Trial Court vide judgment and decree dated 19.07.2016 dismissed the suit of the plaintiff-appellant holding that the possession of the

plaintiff-appellant was not proved. An appeal was preferred by the plaintiff-appellant which also met the same fate vide judgment and decree dated 16.05.2018. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellant would contend that in order to prove his case the plaintiff-appellant had stepped into the witness-box as PW1 and tendered his affidavit Ex.PW1/A in examination-in-chief. He also examined PW2 to prove the site plan of the shop (Ex.P4). Learned counsel for the plaintiff-appellant would further contend that from the receipt (Ex.P1) and the rent receipt (Ex.P2) it stood amply proved that the plaintiff-appellant was a tenant in the demised premises and hence both the Courts below have erred in dismissing the suit of the plaintiff-appellant.

Heard.

In the present case much stress has been laid upon by learned counsel for the plaintiff-appellant on the receipt (Ex.P1). However, no official from the Municipal Council was examined to prove the receipt (Ex.P1). The alleged rent receipt (Ex.P2) is stated to have been issued by Ramesh Kumar. However, neither the said Ramesh Kumar appeared in the witness-box to prove the tenancy nor his concern with the shop in dispute. The admitted case of the plaintiff-appellant is that the defendant-respondent No.1 is the owner of the property and the property had been rented out by defendant-respondent No.1. Hence, the question of paying any rent to Ramesh Kumar did not arise. There is not an iota of evidence to prove the possession of the plaintiff-appellant.

In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. Pure findings of fact have been returned which call for no interference by this Court. No

question of law, much less any substantial question of law, arises in the present case. The appeal, which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

14.02.2023
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO