

RSA-1293-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1293-2023 (O&M)

Date of Decision: August 09, 2023

Jatinder Nath and another

...Appellants

Versus

Rajesh Kumar Ahluwalia and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Karanvir Singh Khehar, Advocate,
for the appellants.

SANJAY VASHISTH, J.

1. Present regular second appeal has been filed by the appellants (defendant Nos. 2 and 3), challenging the concurrent findings recorded by Trial Court and First Appellate Court, while decreeing the suit for possession, filed by respondent No. 1/plaintiff, vide impugned judgment and decree dated 28.07.2017, passed by learned Additional Civil Judge (Senior Division) Ambala, as well as judgment and decree dated 27.03.2023, passed by learned Additional District Judge, Ambala, respectively.

FACTS:

2. Plaintiff filed a suit for seeking possession of first floor of shop No. 1134, Block-V (Old No. 8053/5), Railway Road, Ambala City, District Ambala. Plaintiff pleaded that he is owner and landlord of double storey building bearing No. 1134, Block-V (Old No. 8053/5), Railway Road, Ambala City, and defendants are tenants in the shop on the ground floor under the plaintiff. Earlier, said building was owned by Shri Prahlad Bhagat (father of

the plaintiff), who initiated ejectment proceedings against the then tenants in the shop in question, and an ejectment order was passed on 24.01.1980.

3. In the execution proceedings of the said ejectment order, a compromise was effected with the terms that Achhru Ram (defendant No. 1) and another tenant Sham Lal will remain tenants in the shop on the ground floor, and the possession of the first floor & stairs was delivered to the owner (Prahlad Bhagat). After death of tenant – Sham Lal, tenancy rights in the said shop were succeeded by Jatinder Nath and Smt. Daya Wanti wife of Sham Lal (defendant Nos. 2 and 3).

4. Shri Prahlad Bhagat (father of the plaintiff) sold the entire building in question to the plaintiff, vide registered sale deed dated 16.09.1996. Thus, since the date of purchase, plaintiff is the owner and landlord of the building and defendant Nos. 2 and 3 (appellants herein) are tenants in the shop on ground floor only under the plaintiff. Out of some family settlement between defendant No. 1 and tenant – Sham Lal, it was settled that tenancy rights would be given to one Balkishan son of Achhru Ram (defendant No. 1), and a rent note was executed but possession of the shop was taken by defendant Nos. 2 and 3.

On filing of ejectment petition against Balkishan and defendant Nos. 2 and 3, version of family settlement between Achhru Ram and Sham Lal, was not accepted. Accordingly, ejectment petition was dismissed on 26.03.2008.

5. It is further averred that the possession of the first floor of the

building had been delivered to the owner after the sale in his favour and possession of the same was also with the plaintiff until the time defendants illegally occupied the first floor by breaking open the locks of the plaintiff, about a year back.

Because of all the detailed background, plaintiff instituted the suit for possession regarding first floor of the demised shop.

6. Upon notice, none appeared on behalf of defendant No. 1. Thus, he was proceeded against *ex parte*, vide order dated 18.05.2011. One joint written statement was filed by defendant Nos. 2 and 3 (appellants herein). In the written statement, it is primarily pleaded that suit property is in possession of the answering defendant Nos. 2 and 3, for the last more than 15 years, to the knowledge of the whole world and, thus, on being occupying the property hostile to the knowledge of the plaintiff, they have attained the right of ownership on the basis of adverse possession.

7. In the replication filed by the plaintiff, it was explained that once the defendants are claiming to be in adverse possession, their pleading in the written statement is destructing their own stand because it means that defendants admit the title of the plaintiff in the suit property and plea of defendants is vague and indefinite because there is nothing explained as to when their adverse possession commenced from.

8. After completion of the pleadings, vide order dated 06.06.2012, learned Trial Court framed following five issues:-

“1. Whether the plaintiffs are entitled to the decree of

possession as prayed for? OPP

2. *Whether the plaintiff has not affixed proper Court fee on the plaint? OPD*
3. *Whether the plaintiff has no cause of action to file the present suit? OPD*
4. *Whether the suit of the plaintiff is bad for non-joinder of the necessary parties? OPD*
5. *Relief.”*

FINDINGS OF LEARNED COURTS BELOW:

9. Learned Trial Court gave its finding that as per the contention of the defendants, plaintiff is not the owner of the first floor of Shop No. 1134, because in the sale deed (Ex. P-5) and the site plan (Ex. P-6), selling out of the first floor has not been mentioned.

Said plea was found to be untenable because first floor upon the shop is nothing but a *Chobara*, i.e. a floor bounded by walls from four sides. Thus, it was held that *Chobara* is nothing but a part and parcel of the same building/shop, having the ground floor in which there is a constructed shop under the tenancy of the defendants. From sale deed and the site plan, it was found that Prahlad Bhagat sold all four Shop Nos. 1132, 1133, 1134 and 1135, in the name of his son Rajesh Kumar Ahluwalia (plaintiff). Nothing was found to hold that there is any bifurcation of shops upon the building in any manner to say that complete building is not sold and shops were sold by number alongwith all rights upon it. Thus, by no stretch of imagination it could be concluded that excluding first floor of the shops, any other property has been

sold out to the plaintiff. Learned Trial Court has also found that status of the defendants over the disputed property, i.e. on the first floor of the shop in question, is nothing better than an illegal trespasser. Nothing has been produced by the defendants to show their connectivity as owner or even tenant or lawful occupant in any manner on the first floor of the shop. Even plea of adverse possession taken by the defendants is not proved. Observations made by learned Trial Court in paragraph Nos. 19, 20 and 21 of the impugned judgment dated 28.07.2017, says as under:-

“19. The next contention of the appearing defendants is that the plaintiff has not become the owner of the first floor of the shop no. 1134 as in the sale-deed Ex.P5 and site-plan Ex.P6, it is not so mentioned that the first floor has also been sold and it is Prahlad Bhagat, who is still the owner of the upper portion of the said building. However, this contention of the defendants is also not tenable as the first floor upon shop is nothing but a chobara , that is a floor bounded by walls from four sides, which is nothing but a part and parcel of the same building/shop, having the ground floor in which there is a constructed shop under tenancy of defendants. As per sale deed & site plan, it can be seen that all four shops, that is, shop no. 1132, 1133, 1134 and 1135, were sold by Prahlad to plaintiff and 1134 no. shop is situated in between the other shops and there is nothing to show if there is any bifurcation of shops upon the building in a manner to say that complete building is not sold and shops were sold by number along with all rights upon it and only inference, which can be drawn from the same is that Prahlad Bhagat has sold the whole property to the plaintiff and first floor is nothing but part & parcel of same property, which is the shop no. 1134. It has been also clarified by the learned counsel for the plaintiff that only for the purpose of compromise with tenant that first floor portion was distinguished from ground floor portion and except, being a chobara, first floor has no such construction upon it, to make it a different portion of the shop in question so far as for the owner is concerned.

20. For the sake of arguments, if it is believed that the plaintiff is not the owner of first floor in pursuance of sale-deed Ex.P5, the fact of the plaintiff, being son of Parhlad Bhagat, the

owner, is not disputed and being the legal heir of the deceased father, the plaintiff can well be said to have become co-owner in the suit property and suit by a co-owner against the illegal trespasser, is very much maintainable as the status of defendants can well be said to be nothing better than an illegal trespasser as the defendants are neither the owners, nor the tenants or the licensee in the disputed portion and they have even failed to prove their plea of adverse possession taken by them in their written statement.

21. *Therefore, in view of the discussion made above, I am of the considered view that from the oral and documentary evidence on record, the plaintiff has been able to prove his case and therefore, he is entitled to the possession of the suit property/disputed portion as detailed in the headnote of the plaint as prayed for.”*

Accordingly, suit was decreed in its entirety.

10. Finding given by the learned Trial Court, was again examined by the learned First Appellate Court and found that Jatinder Nath (defendant No.1), while appearing as DW-1 in the witness-box, admitted the compromise dated 21.11.1984 (Ex. P-2), which was entered into between Prahlad Bhagat (father of the plaintiff) and Achhru Ram (defendant No. 1) etc. Even there is an admission by the said witness that they are not owners of the disputed building. Regarding payment of rent for allegedly occupying the disputed property, no receipt or any document is produced to even show that they are occupant of the portion in dispute. Moreover, learned First Appellate Court has held that the plea taken in the appeal for the first time, i.e. of being a tenant at the first floor also, is nothing but shows dual standard in the conduct of the defendants.

Plea of being tenant, as taken during the course of appeal and plea

of adverse possession, as pleaded in the written statement, are diametrically opposite to each other. Findings recorded by learned First Appellate Court in paragraph No. 14 of the impugned judgment dated 27.03.2023, says as under:-

“14. However, from perusal of the sale-deed Ex.P5 it is established on record that respondent No. 1-plaintiff is owner of the building in which on ground floor a shop is situated which is on rent with the appellants-defendants. Further, appellant-defendant Jatinder Nath while appearing in the witness box as DW1 has admitted the compromise dated 21.11.1984-Ex.P2 in between Prahlad Bhagat and Achhru Ram etc. He also admitted that they (defendants) are not owners of the disputed building. He further stated that they are tenant in the building and they used to pay rent to Rajesh Kumar. However, he failed to prove or even depose in which capacity they used to pay the rent to Rajesh Kumar. Thus, ownership and land-lordship of respondent No.1-plaintiff over the building is duly proved on record. He also admitted that as per the said compromise Ex.P2, possession of first-floor and stair-case was handed over to owner of the property. Arguments raised by learned counsel for appellants-defendants No. 2 & 3 have been rebutted by appellant Jatinder Nath himself in his cross-examination while appearing in the witness box as DW1. He has admitted in his cross-examination that the disputed building is a double-story building. On ground-floor, there is a shop whereas on first-floor, there is a furnace, where they do work. He further admitted that they are not owners of the property and they are sitting on shops on ground-floor as well as on first-floor being tenant at the rate of Rs.275/- per month and they have paid the rent till the year 2013. Once the appellants-defendants have taken the stand that they have paid the rent, later they can not take the stand that they are not tenants. Moreover, their pleadings regarding adverse possession has also become belied or falsify once they have admitted that they are paying rent of the disputed building till the year 2013. Moreover, they have also failed to describe the date of commencement of their alleged adverse possession. So, plea of the appellants-defendants regarding their adverse possession is outrightly rejected. DW1 has further admitted in his cross-examination that execution was filed in a case titled Prahlad Bhagat Versus Achhru Ram etc. in which compromise Ex. P2 was arrived at between the parties and his father had signed the said compromise. According to the said compromise, first-floor and stair-case were handed over to Prahlad Bhagat, who was father of respondent No. 1-plaintiff. However,

possession of ground-floor was not handed over to the father of the DH. This witness has also admitted that this compromise was effected during pendency of the execution petition. He further admitted that one case was filed by Prahlad against Sham Lal wherein his sisters were not impleaded as party after death of his father Sham Lal. Thereafter, he and his mother were impleaded as a party. So at this stage, he can not take a stand that his sisters were not impleaded as a party in the case as he himself as well as his mother is a party. He is estopped by his own act & conduct. DW1 has also admitted it as correct that when he filed written statement, he had not mentioned about rights of his sisters in the tenancy. This witness has also admitted that they had used compromise Ex. P2 etc. and other receipts which were issued by Prahlad Bhagat in favour of Sham Lal in the suit. So, now it is an admitted fact that previously Sham Lal (father of appellants-defendants No. 2 & 3) and Achhru Ram were tenants on first-floor possession of which was handed over by them to Prahlad Bhagat by virtue of compromise Ex. P2 and now respondent No. 1-plaintiff has alleged that in the year 2009, appellants-defendants had taken forcible possession of the first-floor by breaking the locks. Of-course, date is not mentioned, but such a pleading is enough to accept the claim. Respondent No. 1-plaintiff filed the present suit in the year 2010. So, now onus was upon the appellants-defendants to prove that they were having adverse possession over the first-floor, but they have miserably failed to prove the same. As such, it is acceptable beyond doubt that in the year 2009, appellants-defendants had forcibly & illegally taken over the possession of the first-floor after breaking locks thereof. So, plea of their ownership by way of adverse possession also can not be accepted in any manner.”

VIEW POINT OF THIS COURT:

11. While hearing present appeal, this Court has also minutely gone through the detailed impugned judgments passed by both the Courts below. Nothing is pointed out as any irregularity or illegality in making appreciation of the evidence available on record. Even this Court is of the view that changing the stand by defendant Nos. 2 and 3 (appellants herein) at the time of proceedings in first appeal, by taking the plea of occupying the premises as

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tenants, reflects their conduct, which needs to be deprecated. It appears that by any means, defendant Nos. 2 and 3/appellants are making an attempt to have possession over the complete property, under the garb of tenancy on the ground floor.

Finding no substance to interfere with the well reasoned judgments and decrees passed by learned Courts below, same deserve to be maintained and present regular second appeal is hereby dismissed.

Pending civil miscellaneous applications are also disposed of accordingly.

(SANJAY VASHISTH)
JUDGE

August 09, 2023
Pkapoor

Whether Speaking/Reasoned: ✓YES/NO
Whether Reportable: ✓YES/NO