

RSA-2292 of 2022 (O&M)

2023:PHHC:132992

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

RSA-2292 of 2022 (O&M)
Date of decision: 09.10.2023

Jaswinder Singh

.....Appellant

vs.

Varinder Pal Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. DPS Bajwa, Advocate,
for the appellant.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 19.04.2017 passed by the Court of learned Civil Judge (Junior Division), Ludhiana, whereby suit for possession filed by the appellant-plaintiff has been dismissed as well as against the judgment and decree dated 08.03.2022 passed by Additional District Judge, Ludhiana, whereby appeal filed by the appellant-plaintiff, challenging the judgment and decree dated 19.04.2017, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Brief facts of the case are that plaintiff filed a suit for possession pleading therein that he is the owner of the property i.e. shop no. 26 measuring 13.33 square yards situated at Chhetti Gali, Mohella Mulla Sakoor, Ludhiana, now known as Sadar Bazar Pindi Street, Guzarmal Road, Ludhiana. He had purchased the said shop from Chaman Lal son of Bahali Ram son of Dial Chand resident of house no. B7-266

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Chhatti Gali, Mohella Mulla Sakoor, Ludhiana, vide registered sale deed dated 26.03.2002. Defendant is the real brother of the plaintiff and on 18.01.2015, defendant came to the plaintiff and told that he is facing problem of keeping goods (of cotton, wood and small items) and not for any other purpose as he has no suitable space for keeping it and requested the plaintiff to give him his shop which is lying vacant, for 10 days and he promised to return the possession of the said shop after the required period of 10 days to the plaintiff. Being the brother of the defendant, plaintiff acceded to the said request and gave him the possession of the said shop on 20.01.2015 for 10 days without any consideration for keeping the goods. Plaintiff was astonished, after expiry of 10 days when he demanded the possession of his shop from the defendant, intention of the defendant became dishonest and he illegally and with malafide intention refused to give the possession of the shop to the plaintiff which he has no right to do so.

3. Upon notice, defendant appeared and filed written statement and contested the present suit by raising preliminary objections that suit of the plaintiff for possession is not maintainable and plaintiff has not come to the Court with the clean hands and has suppressed the material fact that defendant is a tenant in the suit property much before the purchase of the suit property by the plaintiff from Shri Chaman Lal in the year 2002. Defendant has originally taken the suit property/shop on rent from its erstwhile owner Shri Chman Lal son of Shri Bahali Ram for the last more than 25 years. Defendant has been regularly making payment of rent firstly to the erstwhile owner Chaman lal and after purchase of the shop by the plaintiff in the year 2002, defendant has been regularly making payment of

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rent to the plaintiff and has also been paying house tax directly to the Municipal Corporation Ludhiana. However, with some dishonest intention, plaintiff has stopped receiving rent from the defendant from February 2015 in spite of the fact that the defendant several times tendered the rent every month in advance and filed the present false and frivolous suit. It is further submitted that plaintiff never issued any receipt of rent, being younger brother of the defendant and defendant has been paying rent to the plaintiff having good faith on him keeping in view the close relationship between the parties. No cause of action has ever accrued to the plaintiff to file the present suit against the defendant. Suit is an abuse and misuse of the process of law. The allegations levelled in the plaint are false and frivolous. Plaintiff under the garb of the present false and frivolous suit, wants to get vacated the property/shop from the defendant which is under his occupation for the last more than 12 years as such the suit of the plaintiff is liable to dismissed with costs.

4. Replication to the written statement filed denying the averments made in the written statement by the defendant.

5. From the pleading of the parties, the following issues were framed: -

1. Whether the plaintiff is entitled for decree of possession of shop no. 26 as prayed for? OPP.
2. Whether the suit of the plaintiff is not maintainable? OPD.
3. Whether the plaintiff has not come to the court with clean hands and suppressed the material facts from the court? OPD
4. Whether no cause of action has ever accrued to the plaintiff to file the present suit? OPD.

5. Relief

6. Parties led their respective evidence. The Court of first instance, after appreciating evidence on record dismissed the suit filed by the plaintiff with costs vide judgment and decree dated 19.04.2017.

7. Feeling aggrieved against the said judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 08.03.2022.

8. Learned counsel for the appellant contended that the judgments and decrees passed by both the Courts below are against law and the evidence on record. He further contended that due to false assurance of the respondent to settle the matter amicably being real brothers, neither appellant nor his counsel appeared before the trial Court to pursue the suit, however, on 28.04.2017 respondent refused to settle the matter. Because of his non-appearance appellant was not aware of the fact that his suit had already been dismissed on 19.04.2017. He further contended that appellant filed appeal within time, however, the same has wrongly been dismissed by the lower appellate Court on the ground of limitation.

9. I have heard the learned counsel for the appellant and perused the record.

10. To prove his case appellant-plaintiff himself appeared PW1 but he failed to turn up for his further cross-examination. In spite of the fact that case remained pending for several dates and several opportunities were given to the plaintiff for appearing in the court and for supporting his case by leading cogent and convincing evidence, he did not appear before the trial Court in order to support his case. Onus to prove his ownership was upon the appellant-plaintiff, which he failed to prove. He further failed to

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prove that any license as alleged by the plaintiff was ever created for 10 days between the parties. Appellant has himself admitted that he became aware about the dismissal of the suit on 28.5.2018. However, the appeal was filed after delay of 12 months and 38 days, which the appellant failed to explain. However, he himself admitted that the appeal was filed after delay of 12 months and 38 days while filing of the application for condonation of delay before the lower appellate Court. Nothing has been placed on record to show that the matter was compromised between the parties. There is no *iota* of evidence which would indicate that the compromise was arrived at between the parties.

11. Concurrent findings have been recorded by both the Courts below that appellant failed to prove that he was owner of the shop in dispute.

12. In view of above, no question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

13. Dismissed.

14. Pending application(s), if any, stand disposed of accordingly.

(NAMIT KUMAR)
JUDGE

09.10.2023
R.S.

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No