

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

134

RSA No.329 of 2024 (O&M)
Date of Decision : 27.02.2024

Niamat Masih

....Appellant

VERSUS

Fredrik Masih

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Simranjot Singh Nagra, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the defendant-appellant against the judgments and decrees passed by the Trial Court dated 25.08.2021 and the First Appellate Court dated 06.11.2023.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent herein filed a suit for possession as owner of the land measuring 1 kanal 4 marlas as fully described in the plaint. It was averred in the plaint that the plaintiff-respondent was owner of the suit land and that the defendant-appellant had illegally encroached upon the suit land and was carrying on the work of Hadda Rori. It was further averred that earlier one Bashir Masih was owner in possession of the land in dispute and he sold the same to the plaintiff-respondent vide sale deed dated 05.01.1993. It was further the case that possession was delivered to the plaintiff-respondent at the time of execution and registration of the sale deed and the plaintiff-respondent became owner in possession of the suit property since 05.01.1993. It was also averred that the defendant-appellant, at the back of

the plaintiff-respondent, encroached upon the property in dispute. It was further the case set up by the plaintiff-respondent that the defendant-appellant in order to grab the land of the plaintiff-respondent filed a false and frivolous suit for permanent injunction against the plaintiff-respondent in which it was alleged that the suit land was purchased by the plaintiff-respondent and the defendant-appellant used to pay an amount of Rs.3,000/- per month to plaintiff-respondent alleging his possession to be legal possession. Later on the said suit was withdrawn by the defendant-appellant before the Lok Adalat on 08.07.2017. On notice, the defendant-appellant appeared and filed his written statement and raised preliminary objections regarding the maintainability and that the plaintiff-respondent has not come to Court with clean hands. On merits it was not disputed to the extent that earlier Bashir Masih was the owner in possession of the suit land and that he sold the same to the plaintiff-respondent and hence admitted the ownership of the plaintiff-respondent. It was however stated that the defendant-appellant herein was a tenant on the suit property for the last 30 years, originally under Bashir Masih and then under the plaintiff-respondent. It was further averred that after purchasing the suit land the plaintiff-respondent started taking rent of Rs.300/- per month from the defendant-appellant. It was further the case that the relationship of landlord and tenant existed between the defendant-appellant and plaintiff-respondent and as such possession of the defendant-appellant over the suit land was legal, lawful and continuous for more than 30 years.

3. From the pleadings of the parties the following issues were framed :

1. Whether plaintiff is entitled for possession as prayed for ? OPP
2. Whether plaintiff is entitled for relief of permanent injunction as prayed for ? OPP
3. Whether the suit of the plaintiff is not maintainable ? OPD
4. Whether plaintiff has no cause of action or any locus standi to file the present suit ? OPD
5. Whether plaintiff has not come to the court with clean hands ? OPD
6. Whether plaintiff has concealing the material fact from the court ? OPD
7. Relief.

4. The Trial Court decreed the suit vide judgment and decree dated 25.08.2021. Aggrieved by the same, an appeal was preferred by the defendant-appellant which appeal was dismissed vide judgment and decree dated 06.11.2023. Hence, the present regular second appeal.

5. Learned counsel for the defendant-appellant has vehemently argued that the defendant-appellant is a tenant in the suit property and that he had categorically stated so when he stepped into the witness-box.

6. Heard.

7. Both the Courts concurrently held that admittedly the property was owned by the plaintiff-respondent. The defendant-appellant herein raised a plea of tenancy, however, he failed to produce any evidence to substantiate the said plea. Neither any rent note nor any receipt was placed on the record. Mere bald allegations were made by the defendant-appellant

that he was occupying the suit land as a tenant. Even the previous owner, namely, Bashir Masih, under whom the defendant-appellant claimed to have been a tenant, was not examined by the defendant-appellant. In the absence of any evidence on the record no fault can be found with the judgments and decrees passed by both the Courts. No other point was argued.

8. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

27.02.2024
jk

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