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

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Date of Decision: 01.03.2024.

Ravinder Singh and another

...Appellants.

Versus

Mohd. Shakil and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Adarsh Jain, Advocate
for the appellants.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellants/ defendants No.3 and 4 against the concurrent findings recorded by both the Courts below vide which the suit of the plaintiff was partly decreed.

2. Brief facts of the case as per plaint are that the plaintiff is tenant in the shop in dispute under defendants No.1 and 2 (respondents No.2 and 3 in the present appeal). Earlier the plaintiff was a tenant of two shops of defendants No.1 and 2 but then under the pressure of defendants No.1 and 2, the plaintiff vacated the other shop, which had been given by defendants No.1 and 2 to Gulzar and now the plaintiff is tenant in possession only in one shop which is the shop in dispute and is working

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there under the name and style of M/s Shakil Wood Works and is paying rent regularly to defendants No.1 and 2. The plaintiff is also having the electricity connection and he is paying the electricity consumption charges. The electricity connection has also been used by Gulzar. It was alleged that the police verification was also conducted in the year 2008, wherein it was found that the plaintiff is in possession as tenant under defendants No.1 and 2. Defendants No.1 and 2 with the help of defendants No.3 and 4, who are real sons of brother of defendant No.1 want to dispossess the plaintiff from the shop in dispute illegally and unlawfully.

4. The suit of plaintiffs was partly decreed by the trial Court, vide judgment and decree dated 24.10.2016. The appeal preferred by the appellants/ defendants No.3 and 4 before the First Appellate Court was dismissed, vide judgment and decree dated 06.03.2020. Hence, the present Regular Second Appeal has been filed by the appellants/ defendants No.3 and 4.

5. Learned counsel for the appellants/ defendants No.3 and 4 has contended that both the Courts below have failed to consider that the shop in dispute is owned by the appellants/ defendants No.3 and 4, which they have inherited from their grandmother Sarbati Devi widow of Gulab Singh on the basis of the registered Will dated 18.03.1999 executed by her in favour of the appellants. He has further contended that the plaintiff was never tenant in the shop in dispute and he is in illegal and unauthorized occupation. Though the plaintiff has come up with the specific case that he was a tenant in the shop in dispute since 2002, but no cogent evidence has

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been brought on record to prove the same. The Courts below also failed to consider the case of the appellants that the suit was collusive between the plaintiff and defendants No.1 and 2 as there was a dispute between defendants No.1 and 2 and between defendants No.3 and 4/ appellants and that vide order dated 28.05.2009, the shop was ordered to be sealed by the civil Court and defendants No.1 and 2 had set up the tenancy from 20.05.2009. Earlier defendants No.1 and 2 denied the claim of the tenancy by the plaintiff, but in a collusive manner admitted the tenancy when sufficient evidence did not come on record to support the claim of tenancy. As the appellants/ defendants No.3 and 4 are owners of the property in dispute, so no injunction can be issued against the true owners nor tenancy could be held under defendants No.1 and 2. It has also not been considered that the rent receipt produced on record is of May, 2009, when litigation between the defendants inter-se had already started and no proof of tenancy before the said date has been produced on record. He has contended that judgments passed by the Courts below are erroneous, illegal and unsustainable in the eyes of law and are liable to be set aside.

6. I have heard learned counsel for the appellants and gone through the records thoroughly.

7. The plaintiff has claimed the tenancy under defendants No.1 and 2 regarding the shop in dispute, whereas as per the appellants he is in possession over the shop in dispute not as a tenant, rather he is illegally and unauthorizedly occupying the shop in dispute in connivance with defendants No.1 and 2. Defendants No.1 and 2/ respondents No.2 and 3 has alleged that respondent No.1 is in possession over the shop in dispute as a

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tenant and was inducted as tenant by them. Thus, so far as possession of respondent no.1 over the shop in dispute is concerned, it is the admitted fact.

8. To prove his tenancy the plaintiff has placed on record the receipt dated 20.05.2009 Ex.P2, which is signed by defendant No.1. Report of Local Commissioner Ex.P31 has also been placed on record. The Local Commissioner, was appointed vide order dated 26.02.2010 by the Court and was directed to take photographs and to report about existence of electricity meter and to prepare the rough site plan alongwith identification of the property in dispute. The Local Commissioner in his report Ex.P31 has reported about existing state of affairs. The tenancy of the plaintiff is also stand admitted by defendants No.1 and 2 and only defendants No.3 and 4/ appellants asserts the ownership and possessory rights over the disputed property on the basis of Will dated 18.03.1999 executed by Smt. Sarbati Devi in their favour. The title suit qua the property in dispute between the defendants is pending for adjudication and in the present suit only tenancy of the plaintiff under defendants No.1 and 2 is to be determined. Defendants No.3 and 4/ appellants have admitted in their written statement that the plaintiff had been inducted as a tenant in the shop in dispute by defendants No.1 and 2, though they have claimed that he had been inducted as a tenant by defendants No.1 and 2 in an illegal and unlawful manner. So when the title suit between the defendants is also pending for adjudication then this is not the matter in controversy to be adjudicated upon in the present case and it is to be adjudicated in the said other suit. So once the plaintiff is

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established to be a tenant over the shop in dispute under defendants No.1 and 2 then he is entitled to protect his possession.

9. For the reasons recorded above, the present Regular Second Appeal fails as it does not raise any question of law much less substantial question of law.

10. Appeal stands dismissed being bereft of merits.

11. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

01.03.2024.

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