



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

121-1

RSA-697-1993 (O&M)

SARASWATI DEVI AND OTHERS

... Appellants

VERSUS

HAZARI LAL AND ANOTHER

... Respondents

A N D

121-2

RSA-1033-1993 (O&M)
Date of Decision: 03.05.2024

HAZARI LAL

... Appellant

VERSUS

BHAL SINGH AND ORS.

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Ajay Jain, Advocate
for the appellants in RSA-697-1993 and
for the respondents in RSA-1033-1993.

Mr. Ravi Kamal Gupta, Advocate
for the appellant in RSA-1033-1993 and
for the respondents in RSA-697-1993.

VINOD S. BHARDWAJ, J. (ORAL)

CM-935-C-1993 in RSA-697-1993

Since the main appeal is being decided today itself, the instant application under Order 41 Rule 5 C.P.C. is hereby disposed of as having been rendered infructuous.

CM-1460-C-1993 in RSA-1033-1993

For the reasons mentioned in the application, the same is allowed and the delay of 16 days in filing the appeal is hereby condoned.

2024:PHHC:063624

**CM-1461-C-1993 in RSA-1033-1993**

Allowed as prayed for.

MAIN APPEALS

Since both appeals have arisen out of a common judgment and decree dated 19.12.1992 passed in Civil Appeal No.47 of 1990 and 50 of 1990 by the then Addl. District Judge, Hisar, dismissing the appeals and upholding the judgment and decree dated 24.08.1990 passed by the then Sub Judge Ist Class, Hisar in Civil Suit No.452 of 08.01.1989, hence, the same are being decided together. For the sake of facility, the parties are being referred to by their names.

Precise facts of the present case are that Hazari Lal had filed a suit for declaration to the effect that he was owner in possession of shop No.124 situated in New Anaj Mandi, Hisar alongwith Bhal Singh (since deceased and now being represented by Ms. Saraswati Devi) in equal share, and that M/s Banarsi Dass Suresh Kumar were the tenant in the shop in dispute. Hazari Lal thus claimed that he is entitled to half share of the rent for the shop in dispute from M/s Banarsi Dass Suresh Kumar. A claim was raised that the shop in dispute was owned and possessed by Hazari Lal alongwith Bhal Singh (predecessor in interest of Saraswati Devi and others), having purchased the plot in the public auction from the Colonization Department and thereafter constructed the shop in dispute in the year 1970. It was further averred that they had jointly inducted M/s Banarsi Dass Suresh Kumar as tenant in the said shop and that Bhal Singh had been receiveing the rent of the shop in dispute. A request was also made by Hazari Lal to furnish the details of the account of rent

2024:PHHC:063624



and to pay half share of the rent regarding the shop in dispute, however, the same having gone in vain, the suit was filed.

In the joint written statement filed by respondents-defendants (Bhal Singh, since deceased and M/s Banarsi Dass Suresh Kumar), the version put forth by Hazari Lal was opposed. It was submitted that Hazari Lal was not the owner of shop in dispute to the extent of half share as claimed and that he had no concern whatsoever with the shop in dispute. Bhal Singh claimed to have purchased the shop in dispute after payment of the full sale consideration from his own resources and that there was no contribution by Hazari Lal. Reflection of name of Hazari Lal in many of the rent receipts was claimed to be an act of mistake. It was further asserted that possession of the property was taken by Bhal Singh from Colonization Department in February, 1970 and the shop in dispute was constructed by him from his own resources, after incurring heavy expenses. It was thus claimed that Bhal Singh continued to be in possession of the shop in dispute being the sole owner, openly, exclusively and without any interruption and had let the shop to M/s Banarsi Dass Suresh Kumar in his capacity as the sole rightful owner and that he alone was entitled to receive the rent with respect to the said shop in dispute.

On completion of pleadings, following issues were framed:

1. Whether the plaintiff and defendant No.1 are owners of the suit property in equal shares as alleged? OPP
2. Whether the suit is false and frivolous? If so, its effect? OPD
3. Whether the suit is not maintainable in the present form? Plaintiff being not in possession of any portion of the shop in dispute? OPD

2024:PHHC:063624



- 4. Whether the plaintiff has no locus-standi to file the present suit?
OPD
- 5. Whether the plaintiff is estopped from filing the suit by his own act and conduct? OPD.
- 6. Whether the suit is time barred? OPD.
- 7. Whether the suit has not been properly stamped for the purpose of Court fee and jurisdiction? OPD
- 8. Whether the plaintiff has no cause of action? OPD.
- 9. Relief.

Thereafter, the parties led the following evidence in support of their respective claims:

Plaintiff Evidence

- PW1 Raj Kumar, Clerk Market Committee, Hisar.
- PW2 Hazari Lal son of Pat Ram (plaintiff)
- Ex.P1 Memorandum of offer.
- Ex.P2-P9 Copies of Treasury Challan.
- Ex.P10 Copy of Allotment Letter.
- Ex.P11 Letter dated 26.02.1972.
- Ex.P12 Letter dated 27.12.1984.
- Ex.P13 Letter dated 26.02.1972

Defendant Evidence

- DW1 Krishan Lal (SPA of LR's of Defendant No.1).
- DW2 Pawan Kumar son of Sant Lal.
- DW3 Deshraj son of Maman Chand.

2024:PHHC:063624



DW4 Ved Parkash son of Kurda Ram.

DW5 Rang Lal son of Rati Ram.

Ex.D1 SPA.

Ex.D2& D3 Copies of assessment of house tax.

Ex.D4-D13 Reciepts.

Upon consideration of the respective evidences, the then Sub Judge Ist Class, Hisar decreed the suit of Hazari Lal to the effect that he alongwith Bhal Singh are the owners of the shop in dispute in equal shares in view of the documents Ex.P1 to P9, which are the copies of the allotment as well as Treasury Challans showing the deposit of the sale price, reflecting the name of Hazari Lal as well as Bhal Singh.

Aggrieved thereof, Bhal Singh (since deceased) filed a Civil Appeal No.47 of 1990 while Hazari Lal preferred Civil Appeal No.50 of 1990. While the decree was being contested by the successors of the Bhal Singh, Hazari Lal was aggrieved of the decree being partial and that suit for rendition of accounts having not been decreed.

On consideration of the respective contentions advanced by the parties, both the appeals were dismissed by the then Addl. District Judge, Hisar vide judgment and decree dated 19.12.1992.

Learned counsel for the respective parties have reiterated their respective contentions that have already been noticed by both the Courts and need not be repeated.

Having heard learned counsel for the respective parties and after going through the documents available on record as also the judgments of both

2024.PHHC:063624



the Courts, it is noticed that the Additional District Judge, Hisar accepted the claim of Hazari Lal as a co-sharer in the shop in dispute on the strength of documents Ex.P1 to Ex.P9 that have remained un-impeached and could not be dispelled by any valid and admissible documentary evidence. Further, so far as the claim of Hazari Lal for rendition of account is concerned, the same was declined for the reason that Hazari Lal nowhere mentioned in the plaint that upto what period rent had been paid by Bhal Singh to the plaintiff and that it was only during testimony in Court that Hazari Lal came out with an explanation that rent to the extent of his share had been received by him upto year 1982, which was contrary to his plea raised in paragraph No.5 of the plaint, where the averment was to the contrary. The suit was instituted on 08.01.1985, hence, the stand of the plaintiff-Hazari Lal for claiming rendition of account and share in the rent under such circumstances was not accepted. Hazari Lal not having even been specific about the period for which accounts had to be settled, the claim was vague.

Counsel for Hazari Lal has also failed to refer to any error, illegality, perversity or any impropriety in the judgment and decree dated 19.12.1992 passed by the Addl. District Judge, Hisar.

It is also a well settled position in law that concurrent findings recorded by the Courts are not to be ordinarily interfered with by the High Court in a Regular Second Appeal unless there are glaring irregularities, illegalities or gross misappreciation of the evidence available on record.

In view of the above, both the appeals are dismissed. The impugned judgment and decree dated 19.12.1992 passed by the Addl. District

2024:PHHC:063624



Judge, Hisar, dismissing the appeals and upholding the judgment and decree dated 24.08.1990 passed by the then Sub-Judge Ist Class, Hisar, are upheld.

Photocopy of this judgment be placed on the file of another connected case.

MAY 03, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No