

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

125

CR-660-2021**Date of decision: 03.04.2024****VIJAY KUMAR & ANR.****..Petitioners****Versus****M/S RAJENDER KUMAR ANIL KUMAR & ANR.****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Ajay Jain, Advocate
for the petitioners.

Mr. Rajesh Sethi, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. The petitioners before this Court are the plaintiffs. They have filed a suit for possession by way of redemption of the property, which was mortgaged by their predecessor in favour of the defendants. The plaintiffs have claimed the property by virtue of a sale deed executed on 18.10.2004 by Sh. Suraj Rattan son of Sh. Nebh Raj. Sh. Nebh Raj was the mortgagee of the property. Smt. Kako Devi and Sh. Nebh Raj were the owners, who had mortgaged the property. The learned counsel representing the respondents submits that Sh. Nebh Raj was representing Smt. Kako Devi-the owner as attorney.

2. Be that as it may.

3. At one stage, defendant No.2 Smt. Krishna Rani filed petition seeking eviction of the petitioners, who were in possession of the property as tenants. The Rent Controller ordered their eviction, which was subsequently upheld by the higher Courts.

4. As noticed, the plaintiffs filed suit by virtue of the sale deed dated 18.10.2004, executed by Sh. Suraj Rattan son of Sh. Nebh Raj. During the pendency of the suit, an application was filed by the plaintiffs for permission to lead secondary evidence in order to prove photocopy of the family partition dated 30.03.1990 between Sh. Nebh Raj and his family members. The trial Court has dismissed the application on the ground that the aforesaid family settlement has not been made part of the plaint and the plaintiffs have not given detail as to when and how the original document was lost or misplaced.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

6. The learned counsel representing the petitioner submits that in view of the judgment passed in **Ravinder Singh @ Jassi Vs. Indermohan Singh, 2022(4) RCR (Civil) 181**, there is no requirement of filing an application for secondary evidence. He submits that the party to the suit is entitled to lead evidence and the Court is entitled to subsequently examine “whether the evidence led is primary or secondary?” At that stage, the Court can examine “whether the evidence so led, fulfills the parameters laid down under Section 65 of the Indian Evidence Act, 1872?”. He further submits that the plaintiffs have filed the suit as owners. In order to prove that fact, they have to prove the title of their vendor. Hence, the reference to the deed of partition is subject matter of the evidence, which need not be incorporated in the pleadings. He further refers to Order VI Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as the “CPC”), in support of his submissions.

7. Per contra, the learned counsel representing the respondents submits that the plaintiffs are required to incorporate in their plaint, the necessary facts, which are required to be proved by evidence. He submits that the plaintiffs cannot be permitted to lead evidence, which is not pleaded by him. He further submits that the aforesaid sale deed has been discarded in the rent proceedings and once the primary evidence cannot be led, no amount of secondary evidence can be permitted.

8. This Court has considered the submissions of the learned counsel representing the parties.

9. After examining the provisions of the Indian Evidence Act, 1872, Code of Civil Procedure, 1908 and the High Court Rules and Orders, this Court in **RSA-327-1989, titled as “Madan Lal Vs. Shankar and others”, decided on 01.11.2018**, came to a conclusion that there is no provision for filing an application for permission to lead secondary evidence.

10. In Civil Revision Application No.82 of 2016, decided on 10.11.2017, Bombay High Court also held that such applications are being filed under misconception, which has now attained provisions of an epidemic. Even the Supreme Court in **Dhanpat Vs. Sheoram (Deceased) through LRs and others, 2020 SCC online SC 606** made observations in this regard.

11. In **Civil Revision No.2575 of 2020, titled as “Vinod Kumar Vs. Satbir Singh”, decided on 03.03.2021**, this Court has held as under:-

“Keeping in view the aforesaid facts, this Court is of the opinion that the order under challenge cannot be sustained. This order is declared to be inoperative. The Civil Court is directed to decide the aspect of admissibility of the secondary evidence while deciding the suit. Needless to observe that the plaintiff shall not be

denied an opportunity to lead the relevant evidence. The trial court while finally deciding the case will be entitled to evaluate such evidence and decide whether the plaintiff has successfully proved the existence, validity and genuineness of the agreement to sell and the receipt thereof by way of secondary evidence.”

12. As far as the first objection of the respondents is concerned, it may be noted that Order VI Rule 2 of the CPC, provides that the pleadings shall contain bare minimum facts and that also in concise form. It is specifically proved under Order VI Rule 2(i) of the CPC that the evidence is not required to be incorporated or made part of the pleadings. In this case, the plaintiffs have filed suit for possession by way of redemption of mortgage. They claimed to have stepped into the shoe of mortgager by virtue of a sale deed. They want to prove that their vendor had possessed title. Hence, the evidence sought to be led is not beyond pleadings. The evidence sought to be led in fact permit the plaintiffs to establish their case.

13. As regards objection No.2, it may be noted that the Rent Controller is a Court of limited jurisdiction. In any case, in that proceedings, the question was with regard to the eviction of the plaintiffs, who were tenants. In this suit, the plaintiffs are claiming to be owner by virtue of a registered sale deed. Hence, an opportunity is required to be given to prove their case.

14. The last submission of the learned counsel representing the respondent is in fact covered by first objection, however, as already noticed, the evidence sought to be led by the plaintiffs is not alien to their suit.

15. Consequently, the revision petition is allowed. The impugned order is set aside.

16. All the pending miscellaneous applications, if any, are also disposed of.

April 03rd, 2024
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(ANIL KSHETARPAL)
JUDGE

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