

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3173 of 1994(O&M)

Date of Order:07.02.2024

Mohan Singh (since deceased) through LRs

.Appellant

Versus

Gobind Ram and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Divanshu Jain, Advocate
for the apepllant.

Ms. Bhumika Khatri, Advocate, for
Mr. Salil Bali, Advocate
for the respondents.

ANIL KSHETARPAL, J

1. In this regular second appeal, the defendant assails the correctness of the concurrent findings of fact arrived at by the courts below while decreeing the plaintiffs' suit for possession with respect to shop no.228/11, Municipal Committee, Pehowa. The plaintiffs filed the suit for grant of decree of possession on the ground that they have purchased the property from Sh. Kishan Lal son of Sh. Bichha Ram vide sale deed dated 10.02.1984 and the defendant was in possession of the property as licensee under Sh. Kishan Lal.

2. The defendant while contesting the suit claimed that the plaintiffs are not the owners of the property and he never remained a tenant or licensee under Sh. Kishan Lal. In fact, he was a tenant under Sh. Joginder Dev. In this case, pursuant to a decree for specific performance of the

agreement to sell, sale deed with respect to 3/4th share of the larger property was executed in favour of Sh. Kishan Lal, whereas remaining 1/4th share was executed in favour of Sh. Gulab Ram.

3. Sh. Joginder Dev was never the owner of the property. Thus, both the courts decreed the suit. The courts also held that the plaintiffs are owners of the property by virtue of a registered sale deed executed by Sh. Kishan Lal.

4. The learned counsel representing the appellant contends that sh. Kishan Lal and Sh. Gulab Ram were co-owners and Sh. Kishan Lal could not sell the shop in question without partition. He further submits that no evidence has been produced to prove that the possession of the appellant is as a licensee.

5. This court has considered the submissions of the learned counsel representing the parties.

6. The co-sharer is entitled to sell his share in undivided property and is also entitled to deliver possession of the property which is in his possession. Such sale deed would be subject to partition of the property in between the co-owners. Hence, the first argument of the learned counsel representing the appellant has no substance.

7. The second argument of the learned counsel also does not have any substance because both the courts on appreciation of the evidence have found that the possession of the appellant is as a licensee and he has failed to prove that he was inducted as a tenant by any person who has some right, title or interest in the property.

8. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

9. Dismissed.
10. All the pending miscellaneous applications, if any, are also disposed of.

February 07, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO