

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

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RSA No.3194 of 2019 (O&M)

Reserved on : 29.02.2024

Date of Decision : 11.03.2024

Parveen Kumar

....Appellant

VERSUS

The Improvement Trust, Sonipat & Anr.

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajesh Malik, Advocate for the appellant.

ALKA SARIN, J.**CM-8577-2019 and CM-8578-2019**

For the reasons stated therein, the applications seeking condonation of delay of 10 in filing the appeal and 123 days in refiling the appeal are allowed. The delay in filing and refiling the appeal is condoned.

RSA-3194-2019

1. The present regular second appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 30.05.2015 passed by the Trial Court and the judgment and decree dated 04.08.2018 passed by the First Appellate Court whereby his suit for declaration and permanent injunction has been dismissed.

2. The brief facts relevant to the present case are that as per the plaintiff-appellant he was running his Shop No.17 in Chander Sekhar Azad Market which was rented out to him by the defendant-respondents @ Rs.4300/- per month in an open auction on 11.11.2001. It was averred that the plaintiff-appellant regularly paid the rent of the shop to the defendant-respondents till 11.11.2004 but later on the defendant-respondents wrongly

enhanced the rent without prior information or consent of the plaintiff-appellant. The plaintiff-appellant made the payment of rent till 11.06.2007 amounting to Rs.1,28,300/- and then because of threats from the defendant-respondents the plaintiff-appellant vacated the shop in August 2007 but the defendant-respondents refused to accept the key and pressurized him to deposit Rs.1,23,775/- as remaining payment of rent. On 11.09.2007 the electricity connection of the plaintiff-appellant was disconnected and since then the shop is lying vacant. It was further averred that on 31.10.2007, after the plaintiff-appellant had vacated the shop, the defendant-respondents filed an eviction petition against him under Sections 4, 5 and 7 of the Public Premises Act before the Collector, Sonipat which was decided by the CTM-cum-Collector, Sonipat vide order dated 25.05.2009 by directing the plaintiff-appellant to deposit an amount of Rs.2,51,920/-, which order was illegal, null and void. It was further pleaded that as per the order of the CTM-cum-Collector, Sonipat the defendant-respondents took possession of the shop on 04.11.2008 whereas the plaintiff-appellant had already vacated it August 2007. It was pleaded that at the behest of the wrong and illegal order dated 25.05.2009 the defendant-respondents started recovery proceedings under the Land Revenue Act through the Tehsildar, Sonipat who gave a notice for recovery of Rs.2,51,000/-. The said notice was stated to be illegal, null and void and without any basis and that the plaintiff-appellant requested the defendant-respondents not to start the recovery proceedings and to withdraw the notices dated 16.03.2010 and 17.04.2010 but no heed was paid. Hence, the present suit. Defendant-respondent No.1 was proceeded against ex-parte on 06.12.2010. Defendant-respondent No.2 filed a written statement but then absented. As such, he was also proceeded against ex-parte

on 26.05.2012. In his written statement the defendant-respondent No.2 raised preliminary objections regarding maintainability, locus-standi, cause of action, unclean hands and mis-joinder of parties. On merits it was pleaded that the defendant-respondent No.2 had no concern of any kind and was performing his duty vested under the Recovery of Arrears of Land Revenue Act and the Collector vide order dated 25.05.2009 had imposed a penalty of Rs.2,51,920/- under Sections 4, 5 and 7 of the Public Premises Act and that the defendant-respondent No.2 had issued notices to the plaintiff-appellant just for compliance of the order passed by Collector.

3. The Trial Court framed the following issues :

1. Whether the plaintiff is entitled to a decree for declaration to the effect that order dated 25.05.2009 and notices dated 16.03.2010 and 17.04.2010 are wrong, illegal, null and void and have no binding effects on the rights of the plaintiff ? OPP
2. Whether the plaintiff is entitled for a decree for permanent injunction, as prayed for ? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
4. Whether the plaintiff has no locus-standi to file the present suit ? OPD
5. Whether the plaintiff has no cause of action to file the present suit ? OPD
6. Whether the suit is bad for non-joinder of necessary parties ? OPD

7. Whether the defendant is entitled for special costs under Section 35-A CPC ? OPD

8. Whether the plaintiff has not come to the Court with clean hands and has suppressed the true and material facts from the Court ? OPD

9. Relief.

4. The Trial Court vide judgment and decree dated 30.05.2015 dismissed the suit of the plaintiff-appellant. Aggrieved by the said judgment and decree dated 30.05.2015 an appeal was preferred by the plaintiff-appellant which appeal was also dismissed vide judgment and decree dated 04.08.2018. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant has contended that the impugned judgements and decrees are illegal and erroneous and that the Courts have wrongly dismissed the suit of the plaintiff-appellant. It was submitted that the plaintiff-appellant had vacated the shop in August 2007 so there was no occasion to start proceedings against him under the Public Premises Act which led to the passing of the order and notices under challenge. It is also argued that since the defendant-respondent No.1 did not contest the suit and did not file a written statement the averments made in the plaint stand admitted and therefore the suit should have been decreed.

6. Heard counsel for the plaintiff-appellant and perused the paperbook.

7. Both the Courts have reached concurrent findings of fact and have dismissed the suit of the plaintiff-appellant. The Trial Court in its judgement inter-alia held that *“Arguments heard and case file perused carefully. The plaintiff has sought the relief that the orders dated 25.5.2009*

and the notices dated 16.3.2010 and 17.4.2010 be declared wrong, illegal, null and void, as against defendants. However, this claim is not supported by any convincing evidence of the plaintiff since in oral evidence he only examined the witness Rajesh Kumar Clerk as well as he examined himself. From their testimonies the illegality of the impugned orders and notices could not be proved. The suit is also bad on the ground that the orders and notices which the plaintiff has challenged in this suit were neither exhibited nor marked by the plaintiff as he did not produce any witness to prove the same. Merely the documentary evidence as afore stated were presented by the plaintiff which include copies of plaint and written statement as well as the statement of the plaintiff and even though the defendants were proceeded against ex-parte, the claim of the plaintiff does not stand on its own legs. It is the settled law that the case of the plaintiff must stand on its legs and he cannot take benefit of weakness of case of the defendant". Before the First Appellate Court also the stand of the plaintiff-appellant was not accepted and his appeal was dismissed holding inter-alia that "It was the bounden duty of the plaintiff to lead on record the convincing evidence to seek the relief as prayed for. It is settled principle of law that the plaintiff cannot be take benefit of the weakness of the defendants and he has to stand on its own legs. Therefore, when the defendants are ex parte, it does not mean that the plaintiff will be automatically entitled to the decree as prayed for". Even before this Court the counsel for the plaintiff-appellant has not been able to show any law that his case was to be accepted only because the defendant-respondents did not contest the same or lead any evidence. It is well settled that a plaintiff has to prove his own case and cannot take advantage of the weakness of the defence and the failure of the defendants to establish their

case would not enable the plaintiff to a decree in his favour. In **Balraj Taneja vs. Sunil Madan [(1999) 8 SCC 396]** the Hon'ble Apex Court held:

“29. As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the court. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to

settle the factual controversy. Such a case would be covered by the expression “the court may, in its discretion, require any such fact to be proved” used in sub-rule (2) of Rule 5 of Order 8, or the expression “may make such order in relation to the suit as it thinks fit” used in Rule 10 of Order 8.”

In **Smt. Lado vs. Rajender Singh [2018(4) Law Herald 3111]** this Court held :

“10. Contention of learned counsel for the appellant that once the respondents were proceeded against ex parte before the learned trial Court (the said respondents were duly represented before the learned Additional District Judge, Bhiwani), averments of the appellant - plaintiff should be accepted as gospel truth is untenable, unacceptable, hence rejected. It is a settled position that the plaintiff has to prove his/her own case and stand on his/her own legs. Merely because the respondents were proceeded against ex parte before the learned trial court cannot by itself be a ground to allow the plaintiff's suit. In the facts and circumstances of this case, both the learned courts below have rightly held that the evidence on record does not indicate GPA dated 28.05.2004 (Ex. P1) to be vitiated due to fraud, misrepresentation etc.”

8. Moreover, the counsel for the plaintiff-appellant could offer no explanation was why the order passed under the Public Premises Act was

not challenged in appeal. The alleged vacation of the shop by the plaintiff-appellant in August 2007 is also not proved by any cogent evidence on the record. No other point was argued.

9. 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 regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

11.03.2024
Ankur

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