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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-528-2020 (O&M)
Reserved on : 18.01.2024
Date of decision : 23.01.2024

Chhinderpal Kaur ... Appellant(s)

Versus

Kulwant Singh ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Deepak Aggarwal, Advocate for the appellant.

ALKA SARIN, J.

CM-1552-2020

1. The court fee has already been made good. The present application is disposed off as infructuous.

RSA-528-2020

2. The present regular second appeal has been preferred by the plaintiff-appellant against concurrent findings of both the Courts below whereby her suit for possession and recovery has been dismissed.

3. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for possession averring therein that originally Jangir Singh son of Nikka Singh, father of the plaintiff-appellant, was owner of the suit property and the plaintiff-appellant is the unmarried daughter of the said

Jangir Singh (since deceased) and has inherited the suit property from him. Jangir Singh (since deceased) had rented out the suit property to the defendant-respondent and on 09.07.1987, a compromise was entered into between them for monthly rent of Rs.50/- which was enhanced from time to time and was eventually enhanced to Rs.500/- per month in the year 2010. After the death of Jangir Singh, the plaintiff-appellant inherited the suit property and the defendant-respondent has been paying monthly rent to her in the presence of witnesses and he paid the last rent on Lohri 2010 for January 2010 and after that he has neither paid the rent nor tendered the same. According to the plaintiff-appellant the defendant-respondent is in arrears of rent w.e.f. February 2010 but to save court fee the plaintiff-appellant claimed arrears of rent at the monthly rate of Rs.500/- w.e.f 01.05.2010 till 30.04.2014 alongwith interest thereon @ 12% per annum and also further use and occupation charges. As per the provisions of Section 106 of the Transfer of Property Act, the plaintiff-appellant terminated the tenancy w.e.f 30.04.2014 and served a legal notice dated 07.04.2014 upon the defendant-respondent and requested the defendant-respondent to deliver possession of the suit property and pay the arrears of rent but he refused to do so. Hence, the present suit. The defendant-respondent in his written statement took the pleas that the plaintiff-appellant has no cause of action or locus standi, suit was not maintainable, estoppel, plaintiff-appellant has not come to the court with clean hands, valuation for the purpose of court fee. On merits it was stated that Jangir Singh, the deceased father of the plaintiff-appellant, had absolutely no right, title or concern with the suit property and therefore there was no question of the plaintiff-appellant inheriting the suit

property. It was submitted that the averments put forth in the plaint are vague as the plaintiff-appellant had neither attached with the plaint any document regarding the alleged ownership of the deceased Jangir Singh nor attached any document regarding inheriting the suit property. Neither Jangir Singh nor the plaintiff-appellant had any concern with the suit property so the question of giving it on rent by Jangir Singh to the defendant-respondent or payment of rent by the defendant-respondent to Jangir Singh did not arise. It was pleaded that the suit property is situated within the area of Lal Lakeer of the village and is exclusively owned and possessed by the defendant-respondent and that the defendant-respondent had constructed a shop many years ago by spending sufficient amount and since then he is running a small business in the shop for earning his livelihood and is in continuous possession thereof for more than 25/26 years without payment of any rent etc. to any person including the plaintiff-appellant or her father or anybody else. There is no relationship of landlord and tenant between the parties and as such the question of terminating the alleged tenancy by the plaintiff-appellant did not arise. The defendant-respondent denied having received any alleged notice dated 07.08.2014. Replication to the written statement of was filed and on the basis of the pleadings the following issues were framed:

1. Whether the plaintiff is entitled to possession as prayed for in the plaint ? OPP
- 1-A. Whether the plaintiff is entitled to recovery of Rs.18,000/- as arrear of rent for 01.05.2011 till 30.04.2014 as prayed for ? OPP
2. Whether the plaintiff has no locus standi or cause

of action to file the present suit ? OPD

3. Whether the suit is not maintainable in the present form ? OPD

4. Whether the plaintiff is estopped from filing the present suit by her own act and conduct ? OPD

5. Whether the plaintiff has not come to the court with clean hands ? OPD

6. Whether the rough site plan submitted by plaintiff is not correct ? OPD

7. Whether the suit is not properly valued for the purpose of court fee and jurisdiction ? OPD

8. Relief.

4. The parties led their evidence and on the basis of the pleadings and evidence, the Trial Court dismissed the suit of the plaintiff-appellant holding that it had not been proved that the alleged compromise between Jangir Singh and Kulwant Singh was with regard to the suit property, it was not proven that the plaintiff-appellant had inherited the suit property, it was also not proven that there was a tenancy with the defendant-respondent qua the suit property. Aggrieved by the judgment and decree dated 16.08.2017, an appeal was preferred by the plaintiff-appellant which also met with the same fate vide judgement and decree dated 29.08.2019. Hence, the present regular second appeal.

5. The learned counsel for the plaintiff-appellant has contended that the impugned judgements and decrees are illegal and against the evidence available on the record. It is argued that the compromise between

Jangir Singh and the defendant-respondent was proven which made it clear that the defendant-respondent was a tenant in the suit property and since he had not paid the rent he was liable to be evicted therefrom. He sought to rely on the deposition of the Handwriting Expert to buttress his stand. As per counsel, the suit ought to have been decreed.

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

7. In the present case the plaintiff-appellant has failed to establish the due execution of the compromise Ex.P6. The original of the same is not on the record. The said document was the only evidence produced by the plaintiff-appellant to prove the ownership of her father, and subsequently hers, over the suit property which falls within the Lal Lakeer of the village. The First Appellate Court found that *“In the back of all this history, it was very strange that the plaintiff did not bother to produce the original writing, though her entire case revolves around this writing only. It is clear from the application itself which she made for comparison of signatures that in paragraph no.2, she mentioned that she has relied upon the copy of Bahi writing. Hand writing expert was examined as PW3 and he also stated that original Bahi was not attached with the case file. He further stated that the original Bahi was in possession of the calling party till date i.e. the day of deposition. He also stated in affidavit by way of examination-in-chief Ex. PW3/A that he was shown the original Bahi by the plaintiff and her counsel on 10.5.2017 during inspection of case file and taking of photographs. Statement of plaintiff herself was recoded on 19.11.2015 whereby she adduced some documents including the copy of this compromise Ex.P6. She*

stated in that statement that she has brought along the original writing. If she was having the original with her, why she did not produce the same in the court. There is no such observation or order of learned lower court that it had seen original and on its own returned to the party, allowing retaining of photo copy on the record. As per law of evidence photo copy is not admissible and legally speaking the compromise was not proved on record”.

In the absence of any other document evidencing the ownership of the plaintiff-appellant or her father over the suit property, the pleas advanced by the plaintiff-appellant cannot be accepted. No other cogent and reliable evidence has been pointed out by the learned counsel. The deposition of the Handwriting Expert is not enough for the averments made in the plaint to be accepted especially when viewed in the context that the original of the compromise Ex.P6 is not on the record. No other point has been argued.

8. In view of the above, I do not find any ground to interfere in the concurrent findings of fact returned by both the Courts below. No question of law much, less any substantial question of law, arises in the present appeal. The appeal, which is wholly devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

23.01.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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