

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

1)

RSA No.569 of 2016

Date of decision: 28.03.2016

Gurdial

... Appellant

Versus

Buta Ram Joshi and another

... Respondents

2)

RSA No.573 of 2016

Gurdial

... Appellant

Versus

Buta Ram Joshi and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Onkar Rai, Advocate,
for the appellant.

Mr. Amit Jhanji, Advocate,
for the caveator/respondents.

AMOL RATTAN SINGH, J.

1. These two appeals arise out of the judgments of the learned Civil Judge (Junior Division), Phillaur, dated 10.12.2013 and the learned Additional District Judge, Jalandhar, dated 10.09.2015, by the first of which the suit filed by the appellant-plaintiff (hereinafter to be referred to as the plaintiff), was dismissed with costs, whereas the counter-claim filed by the respondents-

defendants (hereinafter to be referred to as the defendants), was decreed in their favour. The appeals filed against that judgment of the Civil Judge, were also dismissed by the first Appellate Court, vide its common judgment aforesaid.

Thus, RSA No.569 of 2016 has been filed against the dismissal of the plaintiffs' suit by the Courts below and RSA No.573 of 2016 has been filed against the judgments and decrees in favour of the respondents-defendants, decreeing their counter claim in their favour.

2. The appellant had instituted the suit on 08.03.2007 seeking permanent injunction restraining the defendants from interfering in his peaceful possession of a shop where he is stated to be running his business of blacksmithing to earn his livelihood.

As per the plaint (the facts of which are being taken from the judgment of the learned Civil Judge (Junior Division), the plaintiff claimed to have taken the suit property, i.e. a shop, on rent from one Ram Lal, initially @ Rs.70/- per month. Later, the rent was increased to Rs.200/- per month, which the plaintiff claimed that he was paying regularly. It was further claimed that the plaintiff had got an electricity connection installed in the name of his father and was also paying his bills regularly for such connection.

It was alleged that the defendants are 'high handed persons', threatening to interfere in the plaintiffs' peaceful possession, after they had purchased the suit property from one Surinder Mohan Sumra, who was the son of Ram Lal. It was further averred that they had even tried to dispossess the plaintiff and to demolish the shop but could not succeed due to the intervention of people from the locality. Consequently, the suit had been filed.

3. Upon notice to them, the defendants appeared and filed their written statement, stating therein that shop in dispute was earlier owned by Surinder Mohan Sumra, who had mortgaged it to the plaintiff for a sum of Rs.10,000/-, with possession of the shop, vide mortgage deed dated 09.07.2001, registered at the office of the Sub-Registrar, Phillaur, on 10.07.2001.

It was further stated that since then the plaintiff was in possession of the shop in dispute, alongwith another shop towards the Western side. The disputed shop, i.e. the suit property, it was averred by the defendants, was previously owned by one Harbans Shah son of Ganga Shah, who had sold it to Surinder Mohan Sumra vide sale deed dated 28.09.1967, duly registered in the office of Sub-Registrar, Phillaur, vide Vasika No.2448 and thereafter, the said Surinder Mohan Sumra sold two shops, including the suit property, to defendant No.2, Kamlesh Kumari (present respondent No.2), vide a sale deed dated 01.03.2007.

The mortgaging of the shop to the plaintiff, for a sum of Rs.10,000/-, was duly mentioned in the sale deed, along with the fact that the mortgage amount was still due to be paid.

It was further contended that the suit property was never given on rent to the plaintiff, either by Ram Lal or by anybody and as such, there was no relationship of landlord and tenant between the parties.

4. Defendant No.2, Kamlesh Kumari, also filed a counter-claim reiterating the aforesaid facts and further stating that she (counter-claimant) was ready to redeem the mortgage by payment of Rs.10,000/- to the plaintiff and had in fact, offered the said sum to him on many occasions, as she had

stepped into the shoes of the original mortgagor/landlord, Surinder Mohan Sumra, in terms of the sale deed dated 01.03.2007.

(It needs to be noticed here that the judgment of the learned Civil Judge refers to the said sale deed as one dated 01.03.2007 at some places and dated 02.03.2007 at other places).

In his reply to the counter-claim, the plaintiff again reiterated what he had stated in his written statement, adding that the shop had been taken initially on rent from Ram Lal in the year 1979 and that the tenancy was an oral one, with rent thereafter increased to Rs.200/- per month and that the said rent had been paid regularly to Ram Lal and after his death, to his legal heirs.

The remaining contents of the reply to the counter-claim, were the same as those taken by the plaintiff, in his plaint.

He also filed a replication to the written statement filed by the defendants to his plaint, reiterating the contents of his plaint.

5. The learned Civil Judge thereafter framed the following issues:-

- I. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
- II Whether the plaintiff has got no cause of action to file this suit? OPD
- III Whether suit is not maintainable in the present form? OPD
- IV Whether counter claimant is entitled for possession of suit by way of redemption? OPCC
- V Whether counter claim is not maintainable in the present form? OPR
- VI Whether counter claimant has got no locus-standi to file counter claim? OPR
- VII Whether counter claimant is barred by her act and conduct from filing the counter claim? OPR

VIII Whether counter claim has not been properly valued for the purpose of court fee and jurisdiction? OPR

IX Relief.”

The parties thereafter examined the following witnesses in support of their respective claims:-

Amarjit Singh as PW1, Santokh Singh as PW2, Ashwani as PW3, Teja Singh, Clerk, as PW4, Jagtar Singh, Clerk, as PW5, Satnam Singh, Draftsman, as PW6, Chhindi Ram as PW7, plaintiff himself as PW8, and Pushpinder Singh, Copyist, as PW9.

Jasvir Singh as DW1, Ashwani Kumar Sharma as DW2, Chaman Lal as DW3, Nirmal Singh, Deed-writer, as DW4, Joga Singh, Additional H.R.C., as DW5, Manjit Kaur, Steno, as DW6, Pawan Kumar as DW7, Buta Ram Joshi as DW8, Bhupinder Singh, Tehsildar, as DW9 and Raj Kumar, Registry Clerk as DW10.

The plaintiff also produced an electricity bill and receipt of payment, as Exs.PX and PY.

6. Upon the basis of evidence led before her, the learned Civil Judge found that Ram Lal had died on 12.08.1994, as per his death certificate, exhibited as Ex.D18 by the defendants. The plaintiff was unaware of this fact at the time of filing of the suit and it was only in his replication that he asserted that after the death of Ram Lal he had been paying rent to his legal heirs. In fact, no document to show that Ram Lal ever owned the property, could also be produced by the plaintiff.

It was also found that not a single receipt could be produced by the plaintiff, to show payment of any rent whatsoever, at any stage, either to Ram Lal or his son Surinder Mohan Sumra, or to the defendants-counter

claimants.

7. Though PWs Amarjit Singh, Santokh Singh, Teja Singh and Chhindi Ram initially deposed in terms of the claim of the plaintiff, in cross-examination, Santokh Singh stated that he neither knew Surinder Mohan Sumra son of Ram Lal, nor that Surinder Mohan Sumra had mortgaged the property to the plaintiff on 10.07.2001. Both, this witness and Amarjit Singh, in their cross-examination also admitted that the suit property was called 'Sutheria di jagah', and as stated by PW2, Santokh Singh, the original owner, Harbans Shah Suthera may have sold off the property (though he did not know to whom).

Amarjit Singh though admitted the name given above, did not know whether Harbans Shah Suthera was owner of the property or not. Both these witnesses, however, stated that they did not know whether Harbans Shah had sold the property to Surinder Mohan Sumra.

8. In his own cross-examination, the plaintiff, as PW8, also stated that he did not know that the property belonged earlier to the 'Sutheras'.

He further admitted that he had not seen any documents of title of the shop with Ram Lal. The plaintiff further admitted that he knew that Surinder Mohan Sumra had sold the property to the defendants.

PW1, Amarjit Singh, however stated in his cross-examination that he was present when the rent was increased, with the father of the plaintiff also present there. It has been further recorded by the learned Civil Judge that in his cross-examination, the plaintiff himself stated that except Ram Lal and Sham Lal, no witness was present at the time when the deed was made.

It needs to be noticed here itself, that admittedly there was no

written rent deed and whether the plaintiff was referring to these persons being present at the time when the rent was increased, or when the original agreement was reached between him and Ram Lal, is not clear. However, as will be seen, that would eventually make no difference.

9. The learned Civil Judge further noticed that PW2 Santokh Singh claimed to be present when the original rent agreement took place and also, when the rent was increased. He also stated in his cross-examination that he did not sign any written agreement, though he was present when the writing took place, at the shop of the plaintiff, at the time of enhancement of the rent.

On the other hand, the stand of the plaintiff had always remained, even in his pleadings, that it was an oral tenancy and no receipts were issued at any time while paying the rent.

10. Further, PW3, Ashwani Kumar, during his cross-examination, stated that he did not know whether the plaintiff was on rent on the property, as no rent was ever paid in his presence. PW7, Chhindi Ram, went even further during his cross-examination and actually admitted that the shop in dispute was never taken on rent from anyone.

10-A. As regards the electricity bills in the name of the appellant-plaintiffs' father, Nasib Singh, it was found by the Court that the address on some of the electricity bills was shown to be of Dana Mandi, whereas some showed an address of the Old Tehsil Road. The official from the Electricity Department, who testified to the veracity of the bills, however, could not give any explanation with regard to the different addresses.

On the basis of the above, the learned Civil Judge held that there was no proof, either documentary or even oral, that any rent was actually ever

paid by the plaintiff to any person.

As regards the house tax register produced by the plaintiff, in support of which a municipal official also stood testimony, it was held that the entry of payment of rent was only for the purpose of assessment of house tax.

11. Adjudicating upon the counter claim of the defendants, the learned Civil Judge found that, undoubtedly, the plaintiff was in possession of the shop in dispute, but by virtue of the mortgage deed dated 10.07.2001 executed by the previous owner, Surinder Mohan Sumra, as a mortgagor, for a sum of Rs.10,000/- given to the plaintiff.

The ownership of Surinder Mohan Sumra by virtue of purchase of the suit property vide sale deed dated 28.09.1967, executed by the original owner, Harbans Shah, in favour of Surinder Mohan Sumra, was duly proved before the learned Civil Judge, by the Registration Clerk, DW5.

Similarly, the learned Civil Judge also found that the sale deed dated 02.03.2007, in favour of the defendants-counter-claimants was also proved by Chaman Lal, who deposed that he had seen the original sale deed executed by Surinder Mohan Sumra in favour of respondent-defendant no.2 Kamlesh Kumari, for a consideration of Rs.4,00,000/-, out of which Rs.10,000/- was retained by the said vendee, in view of the fact that the mortgage still had to be redeemed.

Other witnesses deposing in favour of the sale deed, transferring the property from Surinder Mohan Sumra to Kamlesh Kumari, are also referred to in the judgment of the learned Civil Judge.

12. The mortgage deed was also found to be proved from the deposition of one Manjit Kaur, DW6, duly registered with the Sub-Registrar,

bearing Vasika No.1071. The Tehsildar, Nakodar, also appeared as a witness for the defendants, to prove the aforesaid mortgage deed.

13. On the basis of the aforesaid evidence, the suit of the plaintiff, seeking permanent injunction against the defendants, claiming to be a tenant on the suit property, was dismissed, and the counter claim of defendant No.2, Kamlesh Kumari, seeking that the vacant possession of the suit property be handed over to her, on her redeeming the mortgage amount of Rs.10,000/-, was decreed in her favour.

14. Both the appeals filed by the appellant-plaintiff against the dismissal of his suit and decreeing the counter-claim in favour of defendant No.2, were dismissed by first Appellate Court on identical grounds, as held by the learned Civil Judge, after discussion of the evidence.

15. Before this Court, learned counsel for the appellant submits that, undoubtedly, the suit property was mortgaged at one stage by the son of Ram Lal, i.e. Surinder Mohan Sumra, from whom the appellant claimed to have taken it on rent. He however further submits that after the mortgage was redeemed, the appellants' status as a tenant would stand restored and, therefore, the findings of both the Court below, that the appellant was not a tenant, is a perverse finding.

In this regard, to substantiate his argument that once the mortgage was redeemed by the respondents, the appellants' status as a tenant would stand revived, learned counsel for the appellant has relied upon a judgment of a Full Bench of this Court in **Jagan Nath v. Mittal Sain and others**, AIR 1970 P&H 104: 1969 RCJ 490.

On query by this Court, learned counsel however submits that,

admittedly, there is neither any rent receipt proved before the Courts below, of any rent paid, either to Ram Lal or to his son Surinder Mohan Sumra, who, as per the appellant, stepped into the shoes of Ram Lal after his death.

16. Mr. Rai also points out that in the municipal records, duly exhibited as Exs.PW4/A and PW8/A, the appellant was duly shown as a tenant, which part the Courts below have not dealt with at all. Copies of the aforesaid exhibits have been produced before this Court by the learned counsel.

A perusal of Ex.PW4/A shows that it is an assessment register of the Municipal Council, in which Surinder Mohan Sumra, son of Ram Lal, is shown as the owner and the appellant, Gurdial, is shown to be the occupier, with Rs.70/- shown as the rent amount. Learned counsel also points to the column of annual value of the property, on the basis of which tax is assessed; (shown to be of an annual value of Rs.840/-). Therefore, as per learned counsel, since the suit property is shown to be on rent for Rs.70/- per month, the annual value accordingly would be Rs.840/- for the purpose of assessment of property tax.

Learned counsel further points to the electricity bills, in which the name of the consumer is shown to be Nasib Chand, who is stated to be the father of the appellant, (which is so even as per the memo of parties before this Court and before the Courts below).

Learned counsel for the appellant, yet further, submits that the Courts below have discussed the evidence of the witnesses produced by the appellant in a piecemeal manner and not as a whole, to determine that the appellant was in possession of the property as a tenant. He submits that all the witnesses produced by the appellant actually had testified, on oath, and some

of the witnesses had submitted affidavits in that regard, that the appellant was a tenant on the suit property ever since they could remember.

Mr. Rai also submits that as the appellant had only filed a suit seeking permanent injunction against being evicted from the property except in the due course of law, the onus lay on the respondents to show in the counter-claim filed by Kamlesh Kumari, that the appellant was not a tenant as claimed. Thus, it was for them to produce Surinder Mohan Sumra, from whom they had purchased the property, as a witness.

17. Mr. Amit Jhanji, learned counsel appearing for the caveator/respondents, on the other hand has relied upon a judgment of the hon'ble Supreme Court in **Dhyaneshwar Ranganath Bhandare and another v. Sadhu Dadu Shettigar (Shetty) and another**, 2012(1) RCR (Civil) 499, to submit that where the appellant/occupier of the property is not shown to be a tenant, the assessment register of the Municipality cannot be relied upon to prove such tenancy. He also relies upon a judgment of a coordinate Bench of this Court in **Shri Shanti Ram v. Sagli Ram etc.**, 1981(1) RCR (Rent) 297, to the above effect.

18. After hearing learned counsel for the parties and having considered the judgments of the Courts below, it is not possible to accept the contentions of learned counsel for the appellant, in both these appeals.

The finding of the Courts below is that Ram Lal was never the owner of the property and his son Surinder Mohan Sumra purchased the property in 1967 from the owner thereof, who was one Harbans Shah Suthera. It was also held that the plaintiff-appellant was never a tenant of Ram Lal.

I see absolutely no error in the said finding. Firstly, it is admitted

that there was neither any rent receipt nor any rent agreement produced by the appellant, showing him to be the tenant of any of the three persons he claimed to be paying rent to, i.e. Ram Lal, his son Surinder Mohan Sumra and the present respondents/defendants/counter-claimants. The ownership of the suit property being that of Ram Lal, from whom the appellant originally claimed to have taken it on rent, was never proved by the plaintiff. Further, Ram Lal was never even shown to be a tenant of the original owner, Harbans Shah, so as to enable him to sub-let the property to the appellant-plaintiff.

The contention of learned counsel that Ram Lal, being the father of Surinder Mohan Sumra, was competent to have rented out the property on Surinder Mohan Sumras' behalf to the appellant, is also an argument devoid of merits, because even if Ram Lal can be deemed to have acted on behalf of his son (with no evidence even in that regard), no rent receipt ever issued even by Surinder Mohan Sumra, after his fathers' death, or before, was ever produced by the appellant. The fact that the plaintiff did not even know about Ram Lals' death and only in his replication, stated that he was paying rent to his legal heirs after his death, further shows that as a matter of fact, there was no rent ever paid by the appellant, to either Ram Lal or to his son, Surinder Mohan Sumra.

Similarly, not an iota of evidence was led by the appellant to show that he had ever paid any rent to the respondents-defendants.

19. Further, in the opinion of this Court also, simply because in the Municipal records the appellant was shown to be in possession with the annual value of the property assessed to be Rs.840/-, it could not be taken as conclusive proof of rent actually having been paid by the appellant, either to

the respondents or to the predecessor-in-interest of Surinder Mohan Sumra, who is shown to be the owner of the property in the Municipal records.

As regards the document Ex.PW8/A, that is also a copy of the assessment register, for the year ending 1994-95, showing therein the appellant to be the occupier of the property, paying property tax to the tune of Rs.270/- per year.

There is no doubt that the admitted case of the respondents-defendants was that the plaintiff was in occupation of the suit property, as a mortgagee.

Hence, simply by his having proved payment of electricity bills and the property tax, as an occupier of the suit property, that would still not establish his tenancy on the property, qua either the respondents, or even their predecessor-in-interest, Surinder Mohan Sumra, or the original owner of the property, Harbans Shah.

20. A perusal of the judgments of the Courts below shows that in cross-examination, all the witnesses had admitted that they had never seen Surinder Mohan Sumra, or even his predecessor-in-interest, Harbans Shah. To repeat, without a doubt, the appellant was in occupation of the suit property and the witnesses correctly testified to that effect. As to how such witnesses, without ever having seen either Harbans Shah or Surinder Mohan Sumra, could have testified to the factum of rent being paid to these persons, who were the owners-cum-predecessors-in-interest of the respondents, is something which is wholly beyond comprehension, that too in the absence of any rent receipts produced, nor any other evidence shown that the rent was actually paid to the owners of the property, at any stage, by way of any deposit in the bank

account of either the property owners, or even in the account of Ram Lal.

Thus, reliance placed by the learned counsel on the judgment of the Full Bench of this Court, is of no help to the appellant. To resort to the applicability of the ratio of that judgment, the foremost fact which had to be proved before the Courts below, was that the appellant was ever in the capacity of a tenant in the suit property. That, as discussed hereinabove, has not been proved in any manner, and as such, I see no error in the judgments of the Courts below.

21. It is also to be noticed that no plea of adverse possession was taken at any stage, obviously since the appellant claimed to be a tenant. Therefore, simple occupation of the property for any length of time, would not entitle him to claim tenancy, in the absence of strict proof in that regard. He was, however, proved to be a mortgagee on the suit property; but after the mortgage is redeemed, I do not see what further right he has to continue to occupy the property.

In view of the above, finding no merit in the appeals, they are both dismissed *in limine*, with no order as to costs.

28.03.2016
seema/dines

(AMOL RATTAN SINGH)
JUDGE