

(2011) 08 P&H CK 0219

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3118 of 2011 (O and M)

Sudershan Kumar

APPELLANT

Vs

Smt. Meena Devi and Another

RESPONDENT

Date of Decision: Aug. 1, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.

The challenge in this regular second appeal filed by Sudershan Kumar son of Budh Ram Appellant-Plaintiff (for brevity "the Plaintiff") is to the impugned judgment and decree dated 15.4.2010, vide which, the trial Court has dismissed his suit for a decree of permanent injunction and the impugned judgment and decree dated 22.3.2011, by means of which, the Ist appellate Court has dismissed his appeal as well.

2. After hearing the learned Counsel for the Appellant-Plaintiff, going through the record with his valuable assistance and after deep consideration over the entire matter, to my mind, there is no merit in the instant regular appeal in this context.

3. As is evident from the record that the Plaintiff and his brother were the owners and in possession of the plot in question. They had sold the same to Defendant No. 1 for a consideration of Rs. 1,90,000/-, by way of registered sale deed dated 16.5.2001 and delivered the actual possession at the time of sale. Thereafter, the Defendants became the owners and in possession of the disputed plot.

4. The concocted story put forth by the Plaintiff that on the same day of sale, he was inducted as a tenant by Defendant No. 1 on the plot in question, is not at all tenable,

particularly when the Defendants have stoutly denied the same and rightly ignored by the Courts below. There was no occasion for Defendant No. 1 to induct the Plaintiff as a tenant on the same day of sale deed on the disputed plot.

5. What is not disputed here is that the relationship of landlord and tenant only comes into existence as a result of bilateral agreement. It may be implied from the acts and conduct of the parties, which may indicate that the landlord ever intended to divest himself of the possession of the plot in dispute and to give it to the Plaintiff as a tenant and that the tenant intended to assume possession thereof as such. One of the most important circumstances, from which, the inference of tenancy may be drawn is the payment of rent. Meaning thereby, the payment of rent is an important and normal incident of tenancy and on the other end, the fact that no rent was paid would lead one to a contrary conclusion and negative the existence of such relationship of landlord and the tenant. When there is an implicit intention of the landlord to create tenancy rights in the property, the tenancy only comes into existence as a result of bilateral agreement and evidence of payment of rent etc., which are totally lacking in the present case. The Plaintiff has utterly failed to prove that he was ever inducted as a tenant by Defendant No. 1 or he paid any rent to her. In that eventuality, it cannot possibly be said that the Plaintiff was inducted as a tenant by Defendant No. 1 on the same day of sale. Therefore, the contrary arguments of the learned Counsel for the Appellant-Plaintiff "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances.

6. Sequently, the trial Court, after taking into consideration the entire material on record, negated the claim of the Plaintiff in this behalf. Not only that, the decision of the trial Court was upheld by the Ist appellate Court, by virtue of impugned judgment dated 22.3.2011, the operative part of which is (para 11) as under:

After hearing the learned Counsel for the parties, I find that the Plaintiff has not led any evidence to show that after delivery of possession by way of sale, it was given to the Plaintiff on rent. Although there are marked documents on the file, but the perusal of the same reveals that the possession is shown to be of Meena Devi, Defendant. The Plaintiff is to prove his own case. The Plaintiff is not able to prove that any electric connection has been taken or any shed has been constructed for the purpose of running a dairy. As such, even if on the open plot, one or two buffaloes are tied as per marked photographs, it would not make any difference so as to hold the possession of the Plaintiff. The possession shall be deemed to be of the true owner unless the person claiming any right establishes the same. When the sale deed was executed in writing, then there was no occasion for the Plaintiff to take the plot verbally on rent. It seems to be the malafide intention on the part of the Plaintiff so as to unnecessarily harass the Defendants and to establish his possession on the basis of tenancy. In these circumstances, I do not agree with the counsel for the Plaintiff that the Plaintiff deserves any type of relief, what to talk of injunction. In other words, the Plaintiff has failed to establish his case and the

appeal deserves to be dismissed, which is ordered to be dismissed with costs. Decree sheet be prepared accordingly. The trial Court record be sent back with a copy of this judgment. The appeal file be consigned to the record room after due compliance.

7. The learned Counsel for the Appellant-Plaintiff did not point out any material, much less cogent, to show as to how and in what manner, the impugned judgments and decrees of the Courts below are illegal and would invite any interference in this relevant connection. Meaning thereby, the Courts below have taken into consideration and appreciated the entire relevant evidence brought on record by the parties in the right perspective. Having scanned the admissible evidence in relation to the pleadings of the parties, both the courts below have recorded the above-mentioned concurrent findings of fact. Such pure concurrent findings of fact based on the appraisal of evidence, cannot possibly be interfered with by this Court, while exercising the powers conferred u/s 100 CPC, unless and until, the same are illegal and perverse. No such patent illegality or legal infirmity has been pointed out by the learned Counsel for the Appellant, so as to take a contrary view, than that of well reasoned decision already arrived at by the Courts below, in this behalf.

8. No other meaningful argument has been raised by the learned Counsel for the Appellant to assail the findings of the Courts below in this regard. All other arguments, relatable to the appreciation of evidence, now sought to be urged on behalf of the Appellant, in this relevant direction, have already been duly considered and dealt with by the Courts below.

9. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the Appellant.

10. In the light of aforementioned reasons, as there is no merit, therefore, the instant appeal is hereby dismissed as such.