

After Appreciating the Contentions of Both the Parties and Also Vs. Vs.

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Court : Punjab and Haryana

Decided On : Mar-01-2013

Appellant : After Appreciating the Contentions of Both the Parties and Also

Respondent : Vs.

Judgement :

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH Date of decision:

1. 3.2013 Rs.No.2247 of 1990 Ram KishanAppellant versus Des Raj and othersRespondents CORAM: - HONBLE Mr.JUSTICE HEMANT GUPTA Present: - NonePlaintiff is in second appeal aggrieved against the judgment and decree passed by learned Courts below whereby the suit for permanent injunction restraining the defendants from interfering in the exclusive possession over the site in question was dismissed.

The plaintiff claims to be a tenant of Diocese of Chandigarh Church of North India Ludhiana and that defendants No.1 and 2 are the tenant of defendant No.3 under the Scheme of free accommodation to their mother Smt.

Parmeshwari who is domestic servant of defendant No.3.

It is asserted that there were differences over the boundary wall of their respective houses, which has been broken by defendant Nos.1 and 2 without any sufficient cause.

It is asserted that defendant Nos.1 and 2 want to grab the vacant site ABCD owned and possessed by the plaintiff in the courtyard just in front of the house of the plaintiff.

In the written statement, it was pointed out that the mother of defendant No.1 and 2 is enjoying free accommodation but it was denied that she was residing in the house of defendant No.3.

It is also admitted that the plaintiff is the tenant @ Rs.20/- per month and his tenancy started in the year 1965.

The ownership and possession of the plaintiff over the site ABCD was denied.

It is pleaded that the tenant cannot be the owner of the property.

The plaintiff appeared as his own witness as PW-2 and also examined Mansa as PW-1, S.S.Saini, as PW-3 and D.S.Khan as PW-4 whereas Khus Nasib appeared as DW-1, DW-2 is defendant No.1 and defendant No.3 MRS.Balasunderam.

After considering the evidence, learned trial Court recorded the following findings:

- After appreciating the contentions of both the parties and also critically examining the evidence on this point on behalf of both the parties, I find force in the contentions of the defendants and I am of the considered view that plaintiff has got no right over the site in dispute ABCD.

It was never rented out to him at all.

He could use this site only as a passage and cannot convert it into a kitchen garden and fulwari, thereby blocking the passage of defendant Nos.1 and 2.

If wall AB is reconstructed then defendant Nos.1 and 2 would have no passage to pass from their house.

However, it is also observed that as both plaintiff and defendant Nos.1 and 2 are tenant of Diocese of Chandigarh, therefore, for any of their grievances, they can move the authority concerned and get the same settled.

If the plaintiff wants the site in dispute ABCD for his own use exclusively then he can get the same on rent from Diocese of Chandigarh, its original owner.

Similarly, defendant Nos.1 and 2 have got any problem regarding passage then they can apprise of the Diocese of Chandigarh of the same and can get an amicable settlement arrived at.

Thus, all the above issues are decided accordingly with the above observations against the plaintiff.

Such findings have been affirmed in appeal by the learned fiRs.Appellate Court.

Learned fiRs.Appellate Court has taken into consideration a letter dated 26.7.1985 (Ex.

PW4/C).wherein it has been mentioned that no plot of land was rented out to Ram Kishan in front of his house.

Another letter Ex.

PW4/L shows that the wall in question has been closed by the defendants and in fact Ram Kishan has been directed by his landlord to remove the encroachment made by him.

The learned fiRs.Appellate Court while considering the application for additional evidence written by property manager of Diocese of Chandigarh found that the property manager has appeared as PW-4 on 12.12.1986.

He had deposed that the plaintiff was the tenant of three rooms and there was no mention of the site in dispute having been rented out to him.

It was found that in the early communication dated 28.7.1985, the property supervisor has clearly mentioned that no vacant land was rented out to the plaintiff in front of his house.

It there was any agreement of tenancy, it could have been brought on record by the plaintiff.

The argument at the motion hearing was that the report of the Local Commissioner has not been considered.

I do not find any merit in the said argument.

Local Commissioner cannot give any report in respect of the fact as to whether the area in question is part of the tenanted premises.

Plaintiff has claimed ownership of vacant land in front of the house which has been let out to him.

How the plaintiff, who is in possession of the constructed portion as tenant, can claim title over the vacant portion of land situated in front of the tenanted premises.

The findings of the learned fiRs.Appellate Court is based upon the evidence led by the plaintiff particularly the letter dated 26.7.1985 of the property supervisor that the vacant portion in front of the house of the plaintiff is not part of the tenanted premises.

Such is the finding of fact recorded by the learned Courts below on the basis of the evidence recorded.

I do not find any substantial question of law arises for consideration in the present appeal.

Dismissed.

(HEMANT GUPTA) JUDGE 1 3.2013 preeti

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