

(2014) 05 SHI CK 0119
In the High Court Of Himachal Pradesh
Case No : RSA No. 593 of 2012-C

Sh. Shiv Parsad Gautam

APPELLANT

Vs

Smt. Santosh Aggarwal and Another

RESPONDENT

Date of Decision : 05-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2014) 05 SHI CK 0119

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : Balwant Singh Thakur, Advocate for the Appellant; R.K. Gautam, Sr. Advocate and Ms. Archana Dutt, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—This is the defendant's Regular Second Appeal filed u/s 100 of the Code of Civil Procedure. Plaintiff's Civil Suit No. 355/1 of 2004, titled as Sat Prakash Gautam vs. Shiv Parsad Gautam, stands decreed by Civil Judge (Senior Division) Nalagarh, District Solan, H.P., in terms of judgment and decree dated 27.11.2010. Such findings of fact, judgment and decree stand affirmed by the Addl. District Judge, Solan, District Solan, H.P., Camp at Nalagarh, in terms of judgment and decree dated 6.6.2012, passed in Civil Appeal No. 8-NL/13 of 2011, titled as Shiv Parsad Gautam vs. Sat Parkash (through his LRs), filed by the defendant. Thus, the present appeal arises out of concurrent findings of fact.

2. The appeal stands admitted on the following substantial question of law:-

1. Whether the findings of the learned trial Court as well as first Appellate Court are result of complete misreading and misinterpretation of the evidence and material on record and against the settled position of law?

3. It is not in dispute, appellant was the defendant-landlord in the suit property. In fact, it is one of those rare cases, where tenant was wanting to hand over possession of the tenanted premises to the landlord, who for some strange

reason, refused to accept it.

4. Based on respective pleadings of the parties, trial Court framed the following issues:-

1. Whether the plaintiff is entitled for the relief of permanent prohibitory injunction? OPP

2. Whether the plaintiff is entitled for the relief of mandatory injunction, as prayed? OPP

3. Whether the suit of the plaintiff is not maintainable for want of jurisdiction? OPD

4. Whether the plaintiff has concealed the vital and important facts, as alleged? OPD

5. Whether this Court has no jurisdiction to entertain the suit? OPD

6. Relief.

5. Trial Court decreed the plaintiff's suit in the following terms:-

In view of my findings on all issues supra, the present suit is decreed. The plaintiff held entitled for permanent prohibitory injunction restraining the defendant from claiming any rent of the suit premises after July, 2004. The plaintiff also held entitled for mandatory injunction directing the defendant to take vacant possession of the suit premises as the suit premises are already vacant on the spot. The parties are left to bear their own costs. Decree sheet be drawn accordingly. The file, after its due completion be consigned to the record room.

6. Findings of fact, judgment and decree stand affirmed by the lower appellate Court vide judgment and decree dated 6.6.2012, passed in Civil Appeal No. 8-NL/13 of 2011, titled as Shiv Parsad Gautam vs. Sat Parkash (through his LRs.).

7. It has come on record that since the year 2004, on different occasions and before different forums, plaintiff unambiguously clarified that possession of the suit property was no longer with him. In fact, in the inter se correspondence exchanged between the parties, in the year 2004 itself, this fact was made known to the landlord. That apart, in Court such fact stands established through the testimony of Sh. Surender Sharma (PW-2) and Sh. Ram Singh (PW-3).

8. It is the pleaded case of the landlord that tenancy stood terminated on 27.7.2004 when notice was issued. Significantly, tenant responded stating that premises were lying vacant and tenancy surrendered.

9. For some strange reason, landlord does not want to take possession of the suit property even though it stood clarified by learned Senior Counsel appearing for the tenant that even today his client is not in possession and the property is lying vacant.

10. It is not the case of the landlord that either there is encroachment or that tenant handed over possession of the suit premises to a third party.

11. In fact, even this Court suggested it to the landlord to first take possession and then argue the instant appeal, which suggestion was not acceptable to him, for the reason that he has initiated proceedings for recovery of rent from the year 2004 onwards. But then, tenant is defending such proceedings on the ground that possession is no longer with him.

12. Be that as it may, having heard learned counsel for the parties and also perused the record, I am of the considered view that no ground for interference is made out in the present appeal. It cannot be said that the judgments passed by the Courts below are based on incorrect and incomplete appreciation of facts and material placed on record by the parties or that the same is perverse which has resulted into miscarriage of justice.

13. As such, the substantial question of law is answered accordingly and the present appeal is dismissed. Pending applications, if any, also stands disposed of accordingly.