

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 1207 of 2015
Date of Decision : February 20th, 2015

Jaspal Singh

.... Petitioner

Versus

Ashwani Dhalla and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Present Mr. Puneet Jindal, Senior Advocate,
with Mr. Varun Jindal, Advocate,
for the petitioners.

Dr. BHARAT BHUSHAN PARSOON, J.

A suit for seeking decree of permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff – Jaspal Singh [petitioner herein] over the house in dispute is pending adjudication against defendants Ashwani Dhalla and two others [respondents No.1 to 3 herein] in the court of Civil Judge [Junior Division], Jalandhar. While filing the suit on 2.1.2013, plaintiff Jaspal Singh [petitioner herein] had also made an application under Order XXXIX Rules I & 2 CPC for restraining the defendants from interference in his possession over the house in dispute.

2. This application was allowed vide order dated 5.7.2013 of the Court below. On appeal preferred by two of the defendants against order dated 5.7.2013, reversing the said order on 9.1.2015, Additional District Judge, Jalandhar had dismissed the application under Order XXXIX Rules I and 2 read with Section 151 CPC of the plaintiff-petitioner herein. It is against this order that the present revision petition has been filed by the petitioner-plaintiff.

3. It is claimed that when the petitioner-plaintiff is in possession as a tenant under Janpal Singh, defendant No.3, [respondent No. 3 herein] vide rent agreement dated 10.12.2004, he has a right to protect his possession. It is claimed that the appellant Court has not been taken the facts and circumstances in true perspective. Averring that the lower Appellate Court has completely over-looked and ignored the overwhelming documentary evidence showing possession of the petitioner, prayer for reversal of the impugned order and acceptance of this petition is made.

4. Perusal of the paper book, while hearing arguments of learned counsel for the petitioner, reveals that petitioner-plaintiff Jaspal Singh claims himself to be a tenant under Janpal Singh, one of the defendants vide rent agreement dated 10.12.2004, copy whereof is at Annexure P/1. Smt. Asha Dhalla, defendant No.2, on the basis of her title and claiming Janpal Singh, respondent No. 3 herein as a licensee, had filed a suit for recovery of ₹ 45,000/- by way of damages as also had sought directions against the said defendant to withdraw himself from the house in dispute. This suit was filed on 25.8.2005 and was decreed in favour of the defendant [Smt. Asha Dhalla], respondent herein on 5.2.2010 [Annexure P/2].

5. Rent agreement [Annexure P/1] propounded by the petitioner is not a registered one. Plea of defendant Smt. Asha Dhalla and her husband, Ashwani Dhalla, defendants No. 2 and 1 respectively, [respondents herein] is that the same is not genuine and is of no legal consequences. When vide judgment and decree dated 5.2.2010, Janpal Singh respondent No. 3 herein, has clearly been held to be only a licensee in the house in dispute and has been ordered to withdraw from the same and in addition has also been asked to pay Rs.45,000/- by way of damages on account of use and occupation of the property w.e.f. 23.2.2003 upto 25.8.2005 with interest, it is clear that said Janpal Singh, under whom petitioner-plaintiff Jaspal Singh claims to be a tenant, had no authority to create third party interest.

6. In any case, right, title and interest of petitioner – Jaspal Singh cannot be on a footing better than that of his alleged landlord Janpal

Singh, as already mentioned, who himself has been held to be only a licensee in the property in dispute by a Court of competent jurisdiction and being a party to the said litigation is bound by the same.

7. It is worth notice that had the rent agreement been true and genuine in favour of Jaspal Singh, the same was to find a mention somewhere or the other in the litigation, which his alleged landlord Janpal Singh faced with actual owner, Smt. Asha Dhalla for long and which was adjudicated upon vide judgment and decree dated 5.2.2010 [Annexure P/2].

8. It is very strange that the learned lower Court discussed only one side of the matter in the shape of rent receipts pertaining to the years 2004 to 2012 allegedly issued by Janpal Singh in the name of the petitioner and copies of telephone and electricity bills, without even mentioning about the date of installation of the said electric or telephone connection and without disclosing as to in whose name, the connections had been installed. In fact, the lower Court completely overlooked the entire aspect of previous litigation regarding the house in dispute, about which detailed discussion rather has been made by the lower appellate Court.

9. Observations of the lower Appellate Court are of great relevance and with approval, are reproduced as below :-

“ Pleadings further reveal that the present appellants while filing written statement had pleaded that the present suit has been filed by the plaintiff in collusion with defendant No. 3 i.e. Janpal Singh in order to frustrate the decree passed by the Court in case titled Asha Dhalla vs. Janpal Singh. Asha Dhalla had filed suit against Janpal Singh in the Court claiming that he was a licensee in the suit property and that his licence had been terminated. As such, he is obliged to withdraw from the suit property. That suit was contested by Janpal Singh claiming that he was in possession of the suit property in his own independent right and not as a licensee under the present appellants. The said suit was decreed in favour of Asha Dhalla and appeal filed by respondent No. 2 against the judgment and decree, too had been dismissed by the Appellate Court and now the execution application of the said decree is pending in the Court. Perusal of the judgment shows that it has been clearly held by the lower Court and Appellate Court that Janpal Singh was only a licensee in the suit property and he was obliged to leave the premises as his license had been terminated. Due to dismissal of appeal that judgment and decree has attained

finality. From these facts, it is very much clear that Janpal Singh respondent No. 2 was in occupation of the suit property only as a licensee. Further more, in the previous litigation it had not been pleaded by Janpal Singh that he had inducted the present plaintiff as a tenant in the suit property, rather his claim was that he was in possession of the suit property in his own right. Present plaintiff Jaspal Singh did not figure anywhere in the previous litigation to be in possession of the suit property.”

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“I am of the view that trial Court has miserably failed to take notice of previous litigation regarding status of Japal Singh in the suit property, which has led to passing of wrong order. It is also pertinent to mention here that Janpal Singh being licensee in the suit property had never pleaded that he had inducted the present plaintiff as tenant in the suit property nor he could do so. Moreover, even if the plaintiff is taken to have been inducted as tenant in the suit property by Janpal Singh, in the event of a decree being passed against Janpal Singh by the Civil Court, for withdrawing from the suit property, the plaintiff too under law would be deemed to be bound by the said decree and if he was to be in possession, he too must withdraw therefrom alongwith Janpal Sigh because I am of the view that he could not claim a right over and above that of Janpal Singh.”

10. Learned counsel for the petitioner citing **Lakshmi alias Bhagyalakshmi Vs. E. Jayaram [D] by LR 2013 [1] RCR [Rent] 295 [SC]**, has urged that possession of a tenant in the property is to be protected against threatened action of the defendants to evict her without following the due process of law.

11. With due deference to the law laid down by Hon`ble Supreme Court of India, in this case, the petitioner-plaintiff Jaspal Singh has claimed tenancy under Janpal Singh. As already mentioned, Janpal Singh himself has been held to be only a 'licensee' under Smt. Asha Dhalla, one of the defendants, respondent herein. In such a situation, right and interest of Jaspal Singh [petitioner herein] cannot be on a better footing than that of Janpal Singh, his alleged landlord. At the most, he steps into the shoes of Janpal Singh, respondent No. 3 herein, who was a party in the earlier litigation as well.

12. Considering all the aspects, the lower Appellate Court has rightly exercised the discretion against the plaintiff-petitioner. Rather, move of the petitioner-plaintiff is to over-reach the law and to scuttle the judgment

and decree dated 5.2.2010 passed against his alleged landlord, Janpal Singh who himself has no right, title or interest in the property and has been ordered to withdraw therefrom and has also been asked to make payment by way of damages on account of use and occupation of the suit property.

13. There is no merit in the revision petition and the same is dismissed *in limine*.

(Dr. BHARAT BHUSHAN PARSOON)
JUDGE

February 20th, 2015
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1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?