IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

I.

Civil Revision No.3650 of 2004 (O&M)
Date of decision: 19.5.2015

Satyanarain and others

... Petitioners

Versus

State of Haryana and others

... Respondents

II.

Regular Second Appeal No.4493 of 2011 (O&M)

Satyanarain and others

... Appellants

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Ashish Gupta, Advocate,
for the appellants.

Mr.Manoj Kaushik, DAG, Haryana

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1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

This order will dispose of two cases, i.e., CR No.3650 of 2004 and RSA No.4493 of 2011 as by and large common questions of law and fact are involved in both the matters relating to the same premises. The facts are taken from CR No.3650 of 2004 for convenience.

2. Admittedly, the State has vacated the suit premises and are no longer in physical possession of the property in which the Government was on rent and running a school adminstered by the education department. The property originally belonged to one Mr Kailash Chand Jain who died on 13.4.1987. It appears from record that by a family settlement, the legal representatives of Mr Jain agreed to relinquish their rights in favour of their mother, Mrs Kiran Jain, the widow of Mr Kailash Chand Jain, who became owner of the property on the death of her husband. The memorandum of family settlement is dated 5.6.1987 which has nothing to do with the interest of the State of Haryana since the family arrangement was a private settlement within the family and could be disputed by none other than amongst the family members. Mrs Kiran Jain, the new owner of the suit property, sold it to the present petitioners by a registered sale deed dated 17.12.1990. On 10.9.1997, the vendee-petitioners filed a petition for eviction of the tenant-State of Haryana in the Department of Education on two grounds, namely, for non-payment of rent while the other was for a declaration that the building had become unfit for human habitation and was likely to fall apart. At about the same time, the vendees instituted a suit for permanent injunction restraining the State of Haryana from carrying out any construction on the already weak building or to change its character since the ground floor could crumble at any time. The petitioners succeeded before both the Rent Controller and before the Civil Court that happened to be presided over by the same Judge exercising authority both under the

Haryana Rent Control & Eviction Act, 1973 and of a civil court exercising plenary civil original jurisdiction.

3. Aggrieved by the eviction order and the permanent injunction granted by the Civil Court, the State of Haryana preferred a revision petition against the order of the Rent Controller, Hansi and after seven years through RSA No.4493 of 2011 against the appellate decree. In the revision petition, this Court passed the following order on 6.8.2004: -

> "Heard.
>
> Admitted.
>
> The respondents are restrained from reconstructing/repairing the demised premises during the pendency of the petition.
>
> To be listed for hearing within one year.

4. The stay order continues to operate till the present. However, in the regular second appeal, an application has been filed under Section 5 of Limitation Act, 1963 praying for condoning the delay of 7 years & 22 days in filing the appeal. It has been explained that Mr S.C.Kapoor, learned senior counsel had been engaged by the vendee-petitioners/appellants to file cases in both the matters. Though the revision was filed in the year 2004 but it has been explained that Mr Kapoor could not file the appeal due to his failing health till he unfortunately passed away. As a result, the appeal papers were misplaced and when found, the appeal was filed.

5. For the aforesaid reasons, the delay in filing the RSA is condoned.

6. The learned first appeal Court in the suit for permanent injunction praying for a restraint order against the State from altering the physical character of the building, entered upon a discourse on the question

of title and ownership of the property and took the view that since the plaintiffs did not produce the sale deed upon which they rested their claim to ownership over the demised premises, they were not entitled to grant of an injunction. It is canvassed that the Court need not have gone into the issue of title and ownership in a suit for permanent injunction where the status of the defendant was that of a tenant and the State could hardly have a *lis* with respect to ownership since the property admittedly did not belong to the State of Haryana. If any one had any complaint, the true owner could always come forward and displace the rights of the appellants by decree, if granted.

7. Learned counsel for the appellants relies on a decision of the Supreme Court in **Ramji Rai and another** v. **Jagdish Mallah (dead) through LRs and another;** reported in AIR 2007 SC 900 that in a suit for permanent injunction restraining the parties from doing acts and things which may cause injury to the plaintiff, the question whether the plaintiff is owner is not necessary. The plaintiff is entitled to sue for mere injunction without adding prayer for a declaration of his rights. Therefore, the appellate court fell in patent error in deciding a simple injunction suit and to deal with it as though it were a title suit.

8. As far as the rent proceedings are concerned, they appear to have been rendered infructuous since the State of Haryana has vacated the premises of its own volition and would have virtually nothing to do with the property thenceforth. However, the State I am told has tenaciously held on to the property without handing over its possession to the landlords

9. On the asking of the court the learned counsel for the State, on

instructions from Mr Rajesh Kumar, Assistant in the office of Education Department [Primary], Haryana present in court states that the State Government stepped out of the premises as long back as in the year 2006 but has still symbolic possession of the suit property awaiting the result of the present litigation.

10. Learned counsel for the petitioners states that the last rate of rent received by the landlord was ₹ 250'/- per month from the tenant-State Government. That was in the year 1990 and the rent was never revised thereafter. The State has continued to enjoy the use of the property for 25 years. It may be remembered that the present petitioners entered the land vide sale deed dated 17th December, 1990 and they were, therefore, entitled to reasonable rent from 17th December, 1990 till 2006 when the State Government voluntarily withdrew from the premises and for this, the petitioners/appellants would be entitled to reasonable mesne profits for use and occupation of the premises from 2006 till today till realisation. The State must make amends because it cannot be seen as an ordinary litigant or private person defending litigation brought for good and sufficient cause. To balance out the interests of both the parties the reasonable rent ought to run to the mind of this court from 2004 when the interim order was passed in the civil revision.

11. The strange part of this case is, as revealed by Mr Gupta that though the Education Department has closed down the school which was run in the demised premises but the State has still retained possession of the property forcibly without due authority of law and by their own acts and conduct even though it has effectively vacated the premises 9 years ago

depriving the landlords of the usufruct. Then, in the circumstances, it would be reasonable for this Court to award mesne profits for use and occupation of the premises unlawfully and illegally and under colour of public authority over the premises equipped by police sanction. The property is said to be commercial in nature and comprises 500 square yards midtown in which an old and dilapidated building once stood which now has crumbled down as admitted by the learned State counsel fortifying the view that the building was not fit for human habitation even when the eviction petition was filed.

12. This Court would, therefore, *ex debito justitiate* award to the petitioners mesne profits @ ₹ 10,000/- per month from 2004, the date of the interim order in revision, till realization. The State is directed to immediately hand over the peaceful and vacant possession of the demised premises to the petitioners definitely by 1st July, 2015, if not before, after a certified copy of this order is produced by the petitioners before the Principal Secretary, Education Department, Haryana who will instruct the District Administration to handover vacant possession of the premises to the petitioners who are the rightful owners. The State can be given no leeway of tardy execution proceedings and should leave the premises gracefully. The mesne profits be calculated and paid to the petitioners on or before 1st July, 2015.

13. Learned counsel for the State submits that the property originally belonged to Mr Kailash Chand Jain and was run as a *Dharamshala* and that is how, the State by consent of Mr Jain had entered the premises to run a school in public interest and this is a mitigating circumstances not to award mesne profits at all. The argument appears to be

attractive in the first flush based on public interest but on reflection and due thought, it is not possible to agree. The State may be driven by public interest but private parties who have purchased private property cannot be compelled to act *pro bono publico* or with a spirit of self sacrifice. It matters little whether the property was a *Dharamshala* or a *Mahal* or a school closed down, it never belonged to the State but it has successfully tied it up in its legendary red tape for years together for the landlord to try and untie by recourse to legal remedies.

14. For the foregoing reasons, the revision petition is allowed so also the appeal and on the above terms as to payment of mesne profits. The order passed by the learned Rent Controller is restored. The appellate order from which the regular second appeal arises is set aside as an illegal order insisting on all the wrong things by misdirecting itself and the suit is, therefore, decreed with costs throughout.

15. It is made clear that the mesne profits ordered are liable to be refunded by all the erring officers successively holding office who failed to take a rational decision to vacate the premises even when the State had no right to retain someone else's property and deprive the petitioners of its use and occupation for years together. The State would be at liberty to effect recoveries of mesne profits from its functionaries who failed to act in accordance with law.

(RAJIV NARAIN RAINA)
JUDGE

May 19, 2015
Paritosh Kumar