

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7704 of 2013.

Decided on:-January 30, 2015.

Kesar Singh and others

.....Petitioners.

Versus

Mehar Chand Goel.

.....Respondent.

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

Argued by:- Mr. S.S. Nara, Advocate
for the petitioners.

Mr. Ranvir S. Chauhan, Advocate
for the respondent.

Dr. Bharat Bhushan Parsoon, J.

Plaintiff, respondent herein, had filed a suit under Section 6 of the Specific Relief Act, 1963 (for short, the 1963 Act) seeking possession of the shop in dispute located in Khewat No.34, Khatauni No.34, Khasra No.281/1, HB No.246, situated in the revenue estate of village Barwala, Tehsil and District Panchkula on the ground that the defendants, petitioners herein, had taken forcible and illegal possession of the shop from him on 5.8.2011. A case of total denial was set up by the defendants.

2. The trial court on 13.2.2012 had framed the following issues for adjudication of the dispute between the parties:

1. Whether the plaintiff is entitled to a decree of possession

of the suit property, detailed in the head note of the plaint under Section 6 of the Specific Relief Act, on the grounds mentioned in the plaint? OPP

2. Whether the suit is not maintainable in the present form?

3. Relief.

3. Considering oral as well as documentary evidence, deciding all the issues in favour of the plaintiff, the suit was decreed, ordering the defendants to restore the possession of the shop in question to the plaintiff within three months of the passing of the order on 20.9.2013 (Annexure P-1). The decree had followed. It is against this judgment and decree that the defendants, petitioners herein, had preferred this petition claiming that the respondent-plaintiff had himself vacated the shop in question because it was in a dilapidated condition and the roof of the shop had already fallen.

4. It was further claimed that the respondent-plaintiff, in fact, had not been in occupation of the shop as he had sub-let the same to one Ram Kumar who had vacated the shop about two months earlier to demolition of the shop.

5. It is claimed that even an FIR was recorded by the police on the basis of a complaint made by the respondent-plaintiff which after thorough investigation was cancelled finding no truth in the complaint. In short, the case of the defendants is that the plaintiff was not in possession and one Ram Kumar was in possession but since the shop was in a dilapidated condition and its roof had already fallen, the shop was vacated by Ram Kumar of his own and only thereafter had fallen by itself.

6. During the course of hearing provided to the counsel for the parties, existence of the shop on the spot and the same having been earlier in possession of the plaintiff and thereafter in possession of Ram Kumar under

the plaintiff, is clear. Labour Inspector Mrs. Satya Taneja (PW2) has proved that the registration certificate of the shop was in the name of respondent-plaintiff Mehar Chand Goel who was engaged in the business of repairing of electrical appliances. Registration certificate (Ex.P3) is valid upto 31.3.2014. Though she could not comment as to whether the respondent was in occupation of the premises as a tenant or owner, his possession is not disputed. SDE, Dinesh Kohli (PW1) and Satpal Singh (PW3) had further cemented the findings of possession of the respondent-plaintiff by stating that though Kesar Singh defendant was owner of the shop, the same was in possession of respondent-plaintiff Mehar Chand Goel on rent. They also conceded the fact that Ram Kumar son of Sada Ram was also working in the shop with the plaintiff and used to engage himself in the business of mobile phone repairing. There is a clear denial by him that roof of the said shop had fallen or that the shop was in a dilapidated condition. Not supporting the claim of the defendants, he asserted that the respondent-plaintiff himself used to sit in the shop and was in possession of the same and neither he nor his associate Ram Kumar ever surrendered the possession; he has also denied that the shop was in dilapidated condition. There is complete denial of the case of the defendants put to him in his cross-examination that on the date of the incident, no belongings of the plaintiff were lying in the shop. Lachhman Dass (PW4) has corroborated the version of plaintiff Mehar Chand Goel (PW5) in all respects.

7. So far as defendants are concerned, defendant-petitioner Kesar Singh has appeared as DW1. He conceded that the plaintiff, respondent herein, was tenant of the shop since long. When questioned at length, Kesar Singh (DW1) drew blank and could not produce any supportive evidence for his plea that respondent-plaintiff Mehar Chand Goel was tenant only of Smt. Hardeep Kaur or had sub-let the shop to one Ram Kumar.

8. From the detailed discussion of oral as well as documentary evidence, it has become abundantly clear that the shop was neither in dilapidated condition nor any part of it had fallen of its own nor the same was vacated either by the plaintiff or his associate Ram Kumar. It is rather established that it was demolished by the defendants to get the same vacated from the plaintiff. Instead of following the law for vacation of the shop, the defendants took the law into their own hands and showing disrespect to the same, demolished the shop to get the same vacated from the respondent-plaintiff. Even the complaint made by the plaintiff had received a raw deal from the police as report (Ex.DW2/1) by the police did not take into account version of the complainant or of his witnesses. Rather, the Enquiry Officer had not even recorded statements of the witnesses of the complainant. The conclusion arrived at by the court below that the plaintiff was dispossessed illegally and forcibly and his possession was snatched away by the petitioners is a correct finding which is based on facts proved by overwhelming evidence on record.

9. At this stage, it would be appropriate to refer to Section 6 of the 1963 Act as under:

“6. Suit by person dispossessed of immovable property.-(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought-

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

10. For invoking provisions of Section 6 of the 1963 Act, following ingredients are necessary:

- (i) A person need to be in possession of any immovable property;
- (ii) He should have been dispossessed from the same otherwise than in due course of law; and,
- (iii) He may file a suit for restoration of his possession. The suit for restoration of possession has to be filed within six months of the date of dispossession.

11. In short, no one who is in established possession of the premises can be allowed to be forcibly and illegally evicted therefrom. When the plaintiff concededly was inducted as a tenant by the defendants, there was no bar with Ram Kumar to continue as an associate with him.

12. There is admission of defendant No.1 that the plaintiff till 5.8.2011 had his belongings there in the shop. Even report made to the police by the complainant which was not enquired into as per law as witnesses of the complainant were not recorded, also is one sided document and thus is of no legal and evaluatory value.

13. At this stage, reference may be made to para 17 and 18 of the impugned order which for ready reference are reproduced below with approval:

“17. The second question to be determined by this court is the factum of dispossession of the plaintiff which is also established on record by the evidence led by the plaintiff because the plaintiff's witnesses unanimously deposed that the plaintiff was dispossessed by the defendants and this fact has not been controverted by the defendants. The plaintiff's subsequent conduct of promptly reporting the matter to the police and the

action taken thereafter, also go on to strongly suggest that the plaintiff's possession was disturbed by the defendants. The plaintiff has also placed on record inquiry reports prepared by the police but the same could not be controverted by the defendants.

18. In view of the totality of facts and circumstances, this court is of the considered opinion that the possession of the plaintiff as well as his dispossession otherwise in due course of law is established on record and his possession is liable to be restored because nobody can be allowed to take law into his own hands. As far as the defendants' title over the shop in question is concerned, the plaintiff has not disputed the same. However, the defendants can seek appropriate remedy for taking back possession of the shop in question. In view of these facts and circumstances, this issue is decided in favour of the plaintiff and against the defendants."

The findings as above cannot be disputed on facts or in law.

14. Sequelly, there being no merit in the revision petition, the same fails. Findings of the lower court on all the issues are affirmed. As such, affirming the impugned judgment and decree dated 20.9.2013 (Annexure P-1) and dismissing this petition, it is held that the suit of the plaintiff was rightly decreed with costs. The defendants, petitioners herein, would restore the possession of the shop in question to the plaintiff, respondent herein, within one month from the date of passing of this order.

(Dr. Bharat Bhushan Parsoon)
Judge

January 30, 2015

'Yag Dutt'

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