

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 5067 of 2010 (O&M)

Date of decision : 17.08.2015

Ranbir Singh

.....Appellant

Versus

R.K. Goel and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Manvinder Dalal, Advocate
for the appellant.

Mr. Vikas Mohan Gupta, Advocate
for respondents No. 1 and 2.

LISA GILL, J.

Instant appeal has been filed by one of the three plaintiffs impugning the judgments and decree dated 26.10.2009 and 01.11.2010 passed by the learned Civil Judge (Junior Division) Ludhiana and learned Additional District Judge, Ludhiana respectively.

Brief facts are that the present appellant - Ranbir Singh alongwith Om Parkash Sehgal and Chandrika Parshad preferred a suit for permanent injunction restraining the respondent-defendant from dispossessing the plaintiffs from the shops forming part of the property comprised in Unit No. BXXX 670 opposite Vardhman Spinning and General Mills Limited, Chandigarh road, Ludhiana.

Present appellant averred that he had taken shop No. 1 and 2 on rent from the defendants in the year 1994 at monthly rent of ₹300/- per shop subsequently increased to ₹700/- per shop. Tenancy was allegedly oral. Other two plaintiffs had taken one shop each on rent. Plaintiffs urged that they were in continuous peaceful possession of the premises. Present appellant was allegedly running his business after obtaining licence from the Municipal Corporation, Ludhaina and using the electricity connection in the name of respondent-defendant No. 1. He relied on income tax receipts, telephone bills etc. to reflect his established possession. Defendants were allegedly receiving rent from the plaintiffs which they wanted to increase. Respondents were, thus, bent upon causing damage to the roof of the tenanted premises. Application was moved by the plaintiffs to Deputy Superintendent of Police, Focal point. Plaintiffs were constrained to file the suit as the respondents did not desist.

Respondent-defendants while denying the claim of the appellant as well as the other plaintiffs denied the relationship of landlord and tenant between the parties. It was denied that the plaintiffs were ever inducted as their tenants. There was, thus, no question of increasing the rate of rent. No receipts had ever been issued by them and no electricity was used from the electricity connection of the respondents. Appellant was alleged to be in illegal possession of the premises.

Following issues were framed:-

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

2. Whether the suit is not maintainable? OPD

3. Relief.

Learned trial Court on consideration of the facts and circumstances and the evidence on record concluded that the plaintiffs had failed to prove the relationship of landlord and tenant between the parties. Therefore, the suit was dismissed.

An appeal was preferred by the present appellant – Ranbir Singh alongwith Om Parkash Sehgal. Third plaintiff Chandrika Parshad did not impugn the trial Court decision. Learned Additional Sessions Judge, Ludhiana on considering the appeal dismissed the same, finding no merit therein.

Present appellant – Randhir Singh alone has preferred the instant appeal challenging the impugned judgments. Both the other plaintiffs have not approached this Court. It is informed by learned counsel for the respondents that possession of the said shops has been handed over by the plaintiffs - Om Parkash Sehgal and Chandrika Parshad.

Learned counsel for the appellant vehemently argues that it is not necessary for documentary evidence to prove tenancy. In the instant case, plaintiff - Randhir Singh came in possession of the demised premises i.e. two of the shops on the basis of oral tenancy in 1994. Present suit was filed in the year 2003. It is urged that possession of the appellant is proved not only by the electricity bills but also by the telephone bills Ex. P5 to P16. Receipt of rent is duly proved by the entries in the ledger Ex. P43, electricity bills as well as LIC policy and the sale certificate issued by the Municipal

Corporation.

Much stress is laid on the testimony of DW1 R.K. Goyal to prove the appellant's case. Learned counsel for the appellant while referring to affidavit Ex.DW1 by R.K. Goyal submits that possession of the plaintiff-appellant has not been disputed, therefore, once possession of the tenant is proved, he is entitled to injunction even qua the true owner. Occupant cannot be dispossessed without recourse to due process of law. He places reliance on the judgment of the Hon'ble Supreme Court in **Krishna Ram Mahale (Dead) by his LRs versus Mrs. Shobha Venkat Rao** (1989) 4 SCC 131, **Rame Gowda (Dead) by LRs versus M. Varadappa Naidu (Dead) by LRs and another** (2004)1 Supreme Court Cases 769, **Kartar Singh versus State of Haryana** 2013 SCC Online P&H 16953 and **Nagahi Ram and others versus Hari Ram** 2013 SCC Online P&H 15618.

Learned counsel for the respondents while refuting the averments of the learned counsel for the appellant submits that the specific stand of the respondent-defendant was that the plaintiff alongwith others was never in possession of the property as tenants. Learned courts below have rendered judgments on the basis of the evidence on record and there is no ground for interference. He relies on judgment of Hon'ble Supreme Court in **Maria Magarida Sequeria Fernandes and others versus Erasmo Jack de Sequeria (Dead) through L.Rs and others** 2012 (5) SCC 370 as well as **Mohinder Singh versus Pala Singh and others** 2010 (1) RCR (Civil) 750, **Sohan Singh versus Jhaman** 1986 RRR 579 and **Sukhwant Singh**

versus Divisional Forest Officer and another 2010 (2) RCR (Civil)

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I have heard learned counsel for the parties and gone through the record, which was requisitioned, with their able assistance. Both the learned courts below have returned a categorical finding that plaintiff has failed to establish the relationship of landlord and tenant between the plaintiff and defendants. It is not denied that there is no document to prove the factum of tenancy. Be that as it may, plaintiff was unable to produce even the rent receipts which would reflect the acceptance of rent by the respondents. Reliance on the copy of the ledger Ex. P43 is of no avail to the plaintiff. The same cannot be taken to be evidence of acceptance of rent by the respondents. Exs. P2, P3 and P4 are copies of applications allegedly made to the police. There is no endorsement by any official/office. It has been specifically held by the learned lower appellate Court that:

“ The perusal of the file shows that the claim of the appellants is on the basis of oral tenancy, but no person in whose presence the oral tenancy was created has been examined by the appellants to prove the oral tenancy. No rent note, rent receipt or record of Municipal Corporation has been proved on the file. In 2004 (2) CCC 188, his Lordship Hon'ble Mr. Justice M.M. Kumar, Judge Punjab and Haryana High Court, Chandigarh has held that certain essential features have to be proved to hold that there is relationship of landlord and tenant. It necessarily involves the existence of a contract in the form of lease deed or any circumstantial evidence showing that such a contract was in existence. It further

requires that possession of the immovable property should be proved by tenant in his capacity, as such, on payment of rent. It is further observed in the above said judgment that oral evidence rebutted by oral evidence and there is no rent deed or lease deed produced on the record, no rent receipt proved on record. Held in such a situation, no finding can be recorded to conclude that there is relationship of landlord and tenant between the parties. In the present case also, the Plaintiffs have failed to prove any rent receipt on record, whereas, they claim their possession on the basis of tenancy. Hence, they have failed to prove on the file that they are in possession of the suit property as tenant.

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There is no document on the file relating to the tenancy. Though the plaintiff has produced electricity bills, telephone bills and income tax returns but these documents does not depict that these relate to the suit property. In the telephone bills, the property number has not been mentioned and as such, cannot be connected with the suit property. Similarly, the return of Income Tax Ex. P19 to Ex. P28 relating to Ranbir Singh does not depict any property number. Similar is the position relating to the other documents. As such, these documents cannot be connected with the suit property. Moreover, in 2002 (2) CCC 433, it has been held by Punjab and Haryana High Court that ration card, identity card and director showing the address of the plaintiff, all are unilateral documents and these cannot be conclusive proof of possession of the plaintiff, whereas, in the case in hand, the property number has not been mentioned in the documents produced by the plaintiff connecting the suit property.”

I do not find any infirmity in the said conclusion arrived at by the learned Additional District Judge, Ludhiana.

Learned counsel for the appellant has vehemently argued that even if his possession over the property as a tenant is not established, he cannot be dispossessed except in due process of law. Said argument is clearly misplaced and misconceived in view of the fact that the plaintiff has been unable to prove the basis/foundational facts on which he rested his case. In such a situation, injunction cannot be granted to him to protect his possession qua the owner of the property.

This Court in **Sukhwant Singh's** case (supra) has specifically held that the injunction cannot be granted against the true owner. Decision of the Hon'ble Supreme Court in **Rame Gowda's** case (supra) would not be applicable in the instant case for the reason that there is no dispute regarding the title of the defendant-respondent over the demised premises. In **Rame Gowda's** case (supra) the plaintiff had filed the suit alleging his title as well as possession over the disputed piece of land. Plaintiff in the said case failed to prove his title but was found to be in possession of property. Defendant in that case had also failed to prove its title over the disputed land, therefore, it is in the said circumstances that possession of the plaintiff was protected while leaving the question of title open.

In the present case there is absolutely no dispute regarding the title of the respondent – defendant.

Hon'ble Supreme Court in **Maria Margarida's** case (supra) has observed that due process of law is satisfied the moment rights of the parties are adjudicated upon by the competent court. Findings of the High Court of Delhi in **Thomas Cook (India) Limited versus Hotel Imperial**, 2006 (1988) DRJ 545 were approved, which read as under:

"28. The expressions 'due process of law', 'due course of law' and 'recourse to law' have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed 'forcibly' by the true owner taking law in his own hands. All these expressions, however, mean the same thing - ejectment from settled possession can only be had by recourse to a court of law. Clearly, 'due process of law' or 'due course of law', here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.

Now, this 'due process' or 'due course' condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is

important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the 'bare minimum' requirement of 'due process' or 'due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e., for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the 'recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law."

Keeping in view the facts and circumstances as discussed above, learned counsel for the appellant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Impugned judgments are well reasoned judgments rendered after proper appreciation and consideration of the evidence on record.

Consequently, I do not find any infirmity, illegality or perversity in the impugned judgments and decree dated 26.10.2009 and 01.11.2010 passed by the learned Civil Judge (Junior Division)

Ludhiana and learned Additional District Judge, Ludhiana respectively, which would warrant any interference by this Court.

Present appeal is, consequently, dismissed.

August 17, 2015
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(Lisa Gill)
Judge