

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 3479 of 2013 (O&M)

Date of decision : 9.3.2015

Rakesh Kumar

.. Appellant

versus

Anjani Kumar and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Jasbir Rattan, Advocate, for the appellant.

Rajesh Bindal, J.

Defendant no. 2 is before this Court impugning the concurrent findings of fact recorded by both the Courts below whereby the suit filed by the plaintiffs/respondent nos. 1 and 2 for mandatory injunction and damages, was decreed.

The case set up by the plaintiffs was that the property in question was given to the appellant and respondent no. 3 as licensee along with furniture and fixtures in April, 2001 to be vacated on the asking of the owner. In the month of February, 2002, the appellant and respondent no. 3 were asked to vacate the same and hand over the vacant physical possession to the plaintiffs. On their request, they were permitted to live upto 31.3.2002. The appellant and respondent no. 3 having failed to deliver physical possession of the premises in dispute to the plaintiffs, the suit was filed on 10.10.2002. The plea set up by the appellant and respondent no. 3 was that Ashok Bhandari is one of the co-owners of the premises in dispute along with the plaintiffs. The appellant and respondent no. 3 had taken the premises on rent from Ashok Bhandari on May, 2001 @ ₹ 500/- per month and the rent was being paid to him regularly. In fact, it was a relationship of landlord and tenant and not of licensee and licensor. The suit was not maintainable. The trial Court decreed the suit. First appeal preferred by the appellant and respondent no. 3 was dismissed.

Learned counsel for the appellant submitted that there was

ample evidence produced on record by the appellant showing that he was a tenant in the premises in dispute, which was let out to him by one of the co-owners. The suit for mandatory injunction was not maintainable. The rent was being paid regularly to the landlord. He had even a telephone connection installed and gas connection at the premises in his name, which could not be possible unless he was the tenant in the premises. The Courts below have failed to appreciate the evidence properly. Hence, the judgments and decrees deserve to be set aside.

Heard learned counsel for the appellant and perused the paper book.

From the pleadings of the parties, the learned Court below framed the following issues:-

- “1. Whether the plaintiff is entitled for relief of mandatory injunction on the grounds mentioned in the plaint? OPP
- 2 If issue no. 1 is proved, whether the plaintiff is entitled for damages for unauthorised use and occupation of the premises @ Rs. 7000/- p.m. w.e.f. 1.4.2k2 onwards? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff has got no locus standi to file the present suit? OPD
5. Whether the suit is bad as is not properly valued? OPD
6. Relief.”

All the issues were decided against the defendants. The suit of the plaintiffs was decreed. The defendants were directed to remove their belongings and hand over vacant physical possession of the premises in question to the plaintiffs. The judgment and decree of the trial court was upheld in appeal.

The plea set up by the plaintiffs was that the premises was given to the defendants as a licensee along with furniture and fixtures as they were in dire need thereof at that time, having been asked by their the then landlord to vacate the premises in their possession. At that time, the

appellant and respondent no. 3 did not have any alternative accommodation. They were asked to vacate the premises in question by the plaintiffs, but having failed, the suit was filed. It was admitted by the defendant /appellant in his cross-examination that before occupying the premises in dispute, he and respondent no. 3 were living in House No. 3368, Sector 19-D, Chandigarh, on rent having one room, one kitchen and common terrace. The plaintiffs have been able to establish that the furniture being used by the appellant and respondent no. 3 in the accommodation given to them as licensee belong to them. No material was produced by the appellant to rebut the claim made by the plaintiffs.

The registered notice for vacation of the premises in question issued by the plaintiffs to the appellant and respondent no. 3 was received back with the report of refusal/ unclaimed, though sent at the correct address. A copy of the notice sent under postal certificate was not received back undelivered. The most important fact is that in support of the claim that the appellant and respondent no. 3 had taken the premises from Ashok Bhandari on monthly rent of ₹ 500/-, not even a single receipt showing payment of rent to any of the owner of the premises was produced by them on record. However, the plea is self distracting. The earlier premises, which the appellant and respondent no. 3 had to vacate, they were in occupation of one room, one kitchen and common terrace at monthly rent of ₹ 500/-. In the premises in dispute, the appellant and respondent no. 3 claim themselves to be in occupation of two rooms on the second floor, at monthly rent of ₹ 500/- only. He had admitted in his cross-examination that his wife, who is working in Municipal Corporation, Chandigarh, was claiming house rent allowance for the same premises @ ₹ 1,200/- to ₹ 1,300/- per month.

With the aforesaid material on record, I do not think that there is any error in findings of fact recorded by both the Courts below whereby the suit has been decreed against the appellant. No substantial question of law arises.

Dismissed.

9.3.2015
vs

(Rajesh Bindal)
Judge