

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

(1) **RSA No. 3637 of 2013 (O&M)**
Decided on: 14.7.2015.

Pardeep Kumar Gupta

... Appellant

Versus

Jugnu and others

... Respondents

(2) **RSA No. 3638 of 2013 (O&M)**

Pardeep Kumar Gupta

... Appellant

Versus

Deepak Kumar and another

... Respondents

CORAM : **HON'BLE MR. JUSTICE K. C. PURI**

Present : Mr. Sudhir Aggarwal, Advocate,
for the appellant.

Mr. H.S. Rakhra, Advocate,
for respondents No.1 & 2.

K.C.PURI.J.

This judgment shall dispose of aforementioned two RSA No. 3637 of 2013 titled as 'Pardeep Kumar Gupta vs. Jugnu and others and RSA No. 3638 of 2013 titled as 'Pardeep Kumar Gupta vs. Deepak Kumar and another' as the common questions of facts and law arise in both these appeals.

RSA No. 3637 of 2013 is directed by the defendant Pardeep Kumar Gupta against the judgment and decree dated 16.8.2013 passed by Mrs.Vani Gopal Sharma, Additional District Judge, Gurgaon

whereby the judgment and decree dated 17.12.2012 passed by Ms. Guneet Arora, Civil Judge (Junior Division), Gurgaon was set aside and the suit of the plaintiffs for mandatory injunction was decreed. The defendant was directed to hand over the vacant and peaceful possession of the suit property to the plaintiff within one month.

RSA No. 3638 of 2013 has been directed by the plaintiff-appellant Pardeep Kumar Gupta against the judgment and decree dated 16.8.2013 passed by Mrs. Vani Gopal Sharma, Additional District Judge, Gurgaon whereby the judgment and decree dated 17.12.2012 passed by Ms. Guneet Arora, Civil Judge (Junior Division), Gurgaon was upheld and the suit filed by the plaintiff-appellant for permanent injunction was dismissed.

Pardeep Kumar Gupta-plaintiff filed civil suit No. 427 of 9.6.2006 against Deepak Kumar and Bal Kishan seeking decree of permanent injunction. It was pleaded that Deepak Kumar Gupta was in possession of shop No. 190 situated near Sardar Jalebi Wala and opposite to Jhanak Collections in Sadar Bazaar, Gurgaon since April 2003 as tenant of defendants Deepak Kumar and Bal Kishan on a monthly rent of Rs.1500/- and was running a shoe business in it since then. He has offered rent to the defendants for the month of May 2006 but the defendants asked him to enhance the monthly rent to Rs.3000/- per month and when the plaintiff showed his inability to this excessive enhancement of rent, the defendants threatened to dispossess him forcibly from the shop in question. Hence, the suit.

On notice, the defendants appeared and filed written statement taking preliminary objections of maintainability, locus standi, cause of action. Tenancy of the plaintiff was denied. It was pleaded that the shop in question was given to the plaintiff as a licensee. The factum of tenancy was denied. The remaining averments of the plaint were denied.

The plaintiff filed replication wherein the contents of written statement were denied and that of the plaint were re-iterated as correct.

From the pleadings of the parties following issues were framed:-

1. Whether the plaintiff is in possession of the shop in question as a tenant under the defendants at a monthly rent of Rs.1500/- since April 2003 ?OPP
2. Whether the rent upto 30.4.2006 was paid ?OPP
3. Whether the plaintiff is entitled to the injunction as prayed for ?OPP
4. Whether the suit of the plaintiff is not maintainable ?OPP
5. Whether the plaintiff has no locus standi to file the present suit ?OPD
6. Whether the plaintiff has no cause of action to file the present suit ?OPD
7. Whether the plaintiff is estopped from filing the

present suit by his own act and conduct ?OPD

8. Whether the suit of the plaintiffs is bad for mis-joinder and non-joinder of necessary parties ?OPD

9. Relief

Issues No.1 to 3 were decided against the plaintiff and in favour of the defendants. Issues No.4 to 8 were decided in favour of the defendants. Consequently, suit of the plaintiff was dismissed vide judgment and decree dated 17.12.2012 passed by Ms. Guneet Arora, Civil Judge (Junior Division), Gurgaon.

Feeling dis-satisfied with the judgment and decree dated 17.12.2012, the plaintiff filed appeal which was dismissed vide judgment and decree dated 16.8.2013 passed by Mrs. Vani Gopal Sharma, Additional District Judge, Gurgaon.

Still feeling dis-satisfied with the aforesaid judgments and decrees dated 17.12.2012 and 16.8.2013, the present regular second appeal has been filed by the plaintiff-appellant.

The appellant in paragraph No.9 of the grounds of appeal has mentioned that following substantial questions of law have arisen:-

(1) Whether the appellant is not entitled for injunction specifically when he is in possession as a tenant and cannot be dispossessed except in due course of law?

(2) Whether a licence can be proved without

examining the licensor and licensee specifically when the alleged licensor is a party and was proceeded ex parte ?

(3) Whether the judgment passed by both the learned Courts is not based upon surmises and conjectures ?

(4) Whether a license can be terminated without giving any notice by the licensor with regarding to termination ?

(5) Whether the finding of learned First Appellate Court is pure mis-appreciation and misreading of evidence ?

(6) Whether the finding of learned First Appellate Court is not perverse ?

On the other hand, Deepak Kumar and Master Jugnu filed suit for mandatory injunction directing Pardeep Kumar Gupta to hand over the vacant possession of the shop to the plaintiffs. It was pleaded that Deepak Kumar and Master Jugnu were the owners of the suit property and it was given to the defendant as licensee. The license in favour of the defendant stood terminated, revoked and cancelled by act and conduct of the defendant himself on 20.1.2007. Hence, the suit.

The defendants appeared and filed written statement taking preliminary objections of maintainability, locus standi, cause of action. The factum of licence was denied and it was pleaded that the

defendants have been inducted as tenants in the shop in question. Rest

of the contents of plaint were denied.

The plaintiffs filed replication wherein the contents of written statement were denied and that of the plaint were re-iterated as correct.

From the pleadings of the parties following issues were framed:-

1. Whether the plaintiffs are owners of shop No.190 situated in Sadar Bazaar, Gurgaon ?OPP
2. Whether the defendant No.2 was given the property as a licensee ?OPP
3. Whether the licence in favour of defendant No.2 was terminated ?OPP
4. Whether the plaintiffs are entitled to the injunction as prayed for ?OPP
5. Whether the suit of the plaintiff is not maintainable ? OPP
6. Whether the plaintiffs have no locus standi and no cause of action to file the present suit ?OPD
7. Whether the civil Court has no jurisdiction to try and entertain the present suit ?OPD
8. Whether the suit of the plaintiffs is bad for mis-joinder and non-joinder of necessary parties ?OPD
9. Whether the plaintiffs have not come to the Court with clean hands ?OPD

10. Whether the suit of the plaintiffs has not been properly valued for the purpose of Court fees and jurisdiction ?OPD

11. Relief

Issues No.1 to 4 were decided against the plaintiffs. Issues No. 5o to 10 were decided in favour of the defendants and against the plaintiffs. Consequently, suit of the plaintiffs was dismissed vide judgment and decree dated 17.12.2012 passed by Ms. Guneet Arora, Civil Judge (Junior Division), Gurgaon.

Feeling dis-satisfied with the judgment and decree dated 17.12.2012, the plaintiffs filed appeal which was allowed vide judgment and decree dated 16.8.2013 passed by Sh. Vani Gopal Sharma, Additional District Judge, Gurgaon and the suit of the plaintiffs for mandatory injunction was decreed. The defendants were directed to hand over the vacant possession of the suit property to the plaintiffs.

Feeling dis-satisfied with the aforesaid judgment and decree dated 16.8.2013 passed by Sh. Vani Gopal Sharma, Additional District Judge, Gurgaon, the present regular second appeal has been filed by the defendant-appellant.

The appellant in paragraph No.9 of the grounds of appeal has mentioned that following substantial questions of law have arisen:-

(1) Whether a licence can be proved without

examining the licensor and licensee specifically when the alleged licensor is not a party ?

(2) Whether it is not upon a plaintiff to prove his case rather to take benefit of the weakness of the defendant?

(3) Whether the judgment passed by the learned First Appellate Court is not based upon surmises and conjectures ?

(4) Whether a license can be terminated without giving any notice by the licensor with regard to termination ?

(5) Whether the present suit is maintainable without being the alleged licensor as a party ?

(6) Whether the finding of learned First Appellate Court is pure mis-appreciation and misreading of evidence ?

(7) Whether the finding of learned First Appellate Court is not perverse ?

In this case, Pardeep Kumar Gupta has filed suit for permanent injunction restraining the defendants from taking possession of the shop except in due course of law. The case of Pardeep Kumar Gupta is that he is in possession of the suit property on payment of

Rs.1500/- per month as rent. The case of Deepak Kumar and Master

Jugnu is that they were owners of the suit property. They have alleged that Pardeep Kumar Gupta was close friend of Parveen Kumar. Said Parveen Kumar is the cousin of Deepak Kumar and Master Jugnu. Bal Kishan father of Deepak Kumar and Master Jugnu have given the said property to Pardeep Kumar on the intervention of Parveen Kumar as licensee and said licence has been revoked. Pardeep Kumar Gupta has failed before both the Courts below whereas suit of Deepak Kumar and Master Jugnu was dismissed by the trial Court but their appeal was accepted and Pardeep Kumar Gupta was directed to hand over the vacant possession of the suit property to Deepak Kumar and Master Jugnu. There is concurrent finding of fact recorded by both the Courts below that Pardeep Kumar Gupta has failed to prove the tenancy over the suit property. Having realized that said finding of fact cannot be assailed in view of Section 100 CPC as the said findings are not the result of misreading and misinterpreting the evidence learned counsel for the appellant has not argued about the tenancy.

The only point urged during the course of argument by counsel for Pardeep Kumar Gupta is that even if he is found to be in un-authorized possession of the premises, in that case, mere suit for mandatory injunction is not maintainable and Deepak Kumar and Jugnu have to file suit for possession.

The other contention raised by learned counsel for Pardeep Kumar is that licence has not been cancelled and as such suit for mandatory injunction at the instance of Deepak Kumar and Jugnu is

not maintainable.

Both these contentions are meritless and have to be rejected outrightly. There is a finding of fact recorded by the appellate Court that Pardeep Kumar Gupta is in possession of the property as a licensee and that licence stood cancelled. It is nobody's case that Pardeep Kumar Gupta is in un-authorised possession. There is a finding of fact that licence created by Bal Kishan father of Deepak Kumar and Jungu stood cancelled. There is nothing on the file that said finding of fact is against the record or is the result of misreading or misinterpreting the evidence on the file. Pardeep Kumar Gupta has been using the property since 2003 as a licensee and there is nothing on the file that he has ever paid any single penny to Deepak Kumar and Jugnu. Since Pardeep Kumar Gupta has been found to be in possession as licensee and that is the finding of fact and as such, suit for mandatory injunction is maintainable after termination of the licence. So, I have no hesitation in holding that no substantial question of law has arisen in both these appeals.

Consequently, both the appeals are without any merit and the same stands dismissed with costs.

14.7.2015.
SN

(K.C.PURI)
JUDGE