

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 4963 of 2013 (O&M)

Date of decision : March 19, 2015

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Rajinder Singh

.....Appellant

Versus

Rahul Sachdeva and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Arun Jain, Senior Advocate with
Mr. Kushagra Mahajan, Advocate for the appellant.

Mr. M.L Sarin, Senior Advocate with
Mr. Namit Gautam, Advocate for the respondents.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

This regular second appeal is against the judgment dated 28.10.2013 whereby the Additional District Judge, Ludhiana dismissed the appeal against the judgment dated 28.4.2012 passed by the Civil Judge (Junior Division), Ludhiana.

Plaintiff-appellant Rajinder Singh filed a suit for permanent injunction restraining the defendants namely Rahul Sachdeva, Smt. Sangeeta Rani and Sumit Sachdeva from interfering into peaceful possession of plaintiff over the property bearing

Municipal Corporation Number B-XX-3355, Gurdev Nagar near Aarti

Cinema, Ludhiana as detailed in the head note of the plaint and also from dispossessing the plaintiff illegally and forcibly except in due course of law. The plaintiff submitted in his plaint that the plaintiff is a a tenant in the suit property and this tenancy was orally created coupled with the delivery of possession on 1.5.2006 and rate of rent per month was Rs. 10,000/-including the house tax and the plaintiff was allowed to continue his dhaba under the name and style of M/s Pardhan Dhaba. Earlier this property was owned by plaintiff and his wife and they sold the same to the defendants and after that the tenancy was created. The plaintiff is having an electric connection in the suit property and the plaintiff has been paying the rent regularly to the defendants but no receipt is being issued by the defendants. Plaintiff further submitted that on 25.3.2007 the defendants threatened to take forcible possession of the suit property. Hence the suit was filed.

On notice, the defendants filed a written statement and took preliminary objection that this plaintiff had concealed the material facts. The plaintiff was allowed to do his work in the area of 217 sq yards out of property bearing No. B-XX/3355 Gurdev Nagar, Ludhiana as a licensee on the basis of license deed dated 1.5.2006 and the plaintiff agreed to pay Rs. 5 lac per month as the licence fee. The plaintiff has concealed this fact and hence he is not entitled for injunction. The plaintiff is not a tenant of defendants over the suit property. On merits, the defendants denied the status of plaintiff as tenant on the monthly rent of Rs. 10,000/-. The plaintiff and his wife

Raminder Kaur were owners of 239 ½ sq. yards of property bearing municipal number B-XX-3355 situated at Gurdev Nagar Ludhiana and they sold the same through five sale deeds (Ex. P-1 to P-5) to the defendants. The possession of the suit property was handed over to the defendant and payment was made to the plaintiff and his wife. After that the plaintiff approached the defendants for permitting him to use portion of the said property as the plaintiff was unable to arrange the alternative accommodation after the sale of said property and on compassionate grounds the defendants allowed the plaintiff to use the portion of the property as per licence deed dated 1.5.2006. The licence fee was agreed @ Rs. 5 lac per month and period of licence was up to 31.3.2007. Licence deed dated 1.5.2006 was executed by the plaintiff. The plaintiff has not paid any licence fee to the defendants and after 1.4.2007 the defendants were entitled to recover the licence fee @ Rs. 10 lac per month.

The defendants filed a counter claim for recovery of Rs. 65 lac as arrears of licence fee/damages for illegal use and occupation and mandatory injunction directing the plaintiff to remove his belongings and not to enter in the disputed property and also a counter claim for permanent injunction restraining the plaintiff from using any portion of the suit property and also restraining the plaintiff from putting any other person in occupation of the suit property.

Written statement to the counter claim/replication was filed by the plaintiff. The trial Court framed the following issues:

- 1. Whether the counter claimants are entitled for the recovery of Rs. 65 lacs? OPC*
- 2. Whether the counter claimants are entitled to mandatory injunction directing the respondent to remove his belongings from the property in dispute? OPC*
- 3. Whether the counter claimants are entitled to permanent injunction against the defendants being owner in possession? OPC.*

During the pendency of the suit, an application was made by the defendants for directing the plaintiff Rajinder Singh to deposit the amount of mesne profit. Vide order dated 16.2.2009, this application was denied by the Court of Civil Judge (Junior Division), Ludhiana. The application under Order 39 Rule 1 and 2 CPC filed by the plaintiff to seek interim relief was declined by the Court of Civil Judge (Junior Division) Ludhiana vide order dated 5.6.2007. Both the parties filed revision petitions in this Court. Civil Revision No. 5393 of 2009 filed by the defendants and Civil revision No. 6699 of 2009 filed by the plaintiff were decided vide order dated 6.9.2010. A direction was given by this Court to the plaintiff to deposit Rs. 5 lacs per month in the trial Court as mentioned in the licence deed. The plaintiff was directed to deposit the arrears from 1.5.2006 to 30.9.2010 on or before 6.10.2010 and on failure of deposit of such amount, the plaintiff shall not be entitled to prosecute his suit as well as his defence of the counter claim would be struck off. Thereafter,

the matter was taken up before the Supreme Court where the Supreme Court extended the time to deposit such amount vide order dated 8.11.2010. This amount was never deposited by the plaintiff. Thereafter the suit filed by the plaintiff was dismissed and the defence was struck off in the counter claim filed by the defendants.

The trial Court proceeded to record the evidence of the defendants in the counter claim. The defendants examined Rahul Sachdeva as PW-1 and he tendered his affidavit Ex. PA in support of his counter claim. Defendants also examined Raj Kumar as PW-2 and his affidavit is Ex. PB. PW-1 proved the original licence deed Ex. P-6 and site plan Ex. P-7. An amount of Rs. 65 lac was due against the plaintiff as arrears of licence fee/ damages as per the terms of the licence fee w.e.f 1.5.2006 to 31.3.2007 and after 1.4.2007 Rs. 10 lacs per month was due which the plaintiff deliberately and illegally has not removed his articles etc. in order to make the payment as directed by the order passed by the High Court (Ex. P-10) and copy of order passed by the Supreme Court (Ex. P-11). PW-2 Varun Gagneja, Finger prints and Handwriting Expert in his report has specifically mentioned that the writer of the disputed signatures had unsuccessfully attempted to disguise that.

After going through the evidence led by the defendants, counter claim was decreed with costs by the trial Court and the defendants were held entitled to a decree for recovery of Rs.65,00,000/- as arrears of licence fee/damages for illegal use and occupation as per licence deed dated 1.5.2006.

Lower appellate Court dismissed the appeal filed by Rajinder Singh against the judgment of the trial Court.

Mr. Arun Jain, learned senior counsel for the appellant does not dispute the fact that pursuant to the five sale deeds (Ex. P-1 to P-5) dated 1.2.2006 to 1.5.2006, a plot of 239 ½ sq yards had been sold to the defendants for a total sales consideration of Rs. 23,00,000/-. The entire sales consideration was paid at the time of execution of the sale deed. However, the execution of the licence deed dated 1.5.2006 was being denied. This document had not been proved by the defendants in his counter claim. As per the report of the hand writing expert as per Ex. PW-3 Varun Gagneja, the signatures of the plaintiff on the licence deed were disguised. Moreover two witnesses to the licence deed Pawan Batra and Kirpal Singh did not appear as witnesses to prove the licence deed by the defendants in the counter claim. Hence, the present appellant had no opportunity to cross-examine these two witnesses i.e Pawan Batra and Kirpal Singh. Merely by the deposition of PW-1, the document could not be said to have been proved in accordance with law. As per the terms of the licence deed Ex. P-6, it would amount to execution of lease deed. Civil Court had no jurisdiction to entertain a suit/counter claim with regard to above said licence deed. Hence it would be a substantial question of law whether the licence deed was actually a lease deed which requires consideration in this regular second appeal. The trial court has wrongly decreed the suit in the counter claim in favour of the defendants for possession of the suit

property.

Mr. M.L. Sarin, learned senior counsel submits that the Civil Revision No. 5393 of 2009 was filed by the defendants against an order passed by the trial Court on 16.2.2009, whereby an application filed by the defendants directing the plaintiff to pay licence fee at the rate of Rs. 5 lac per month from 1.5.2006 till 31.3.2007 and Rs. 10 lac per month from 1.4.2007 till the vacation of the premises was dismissed. Civil Revision No. 6699 of 2009 was filed by the plaintiff against the orders passed by the Courts below declining an application under order 39 Rule 1 & 2 for ad interim injunction against the defendants to protect his possession as tenant. Both these revisions were disposed of by a detailed order dated 6.9.2010, where the plaintiff and the defendants did not dispute that the plaintiff was in possession of the property pending examination of legality of the document licence deed. A direction was given to the plaintiff to deposit Rs. 5 lac per month as damages for the occupation of the premises and on failure of the deposit of such amount, he was held not entitled to prosecute his suit as well as to defence his counter claim. However an SLP against this order was dismissed by the Supreme Court and only extension of time was granted to the plaintiff to deposit the aforesaid amount. The plea of the plaintiff that he was tenant on the said premises had been rejected while passing the impugned order. Under Order 8 Rule 5 CPC, even if the defence of the plaintiff had been struck off pursuant to the orders passed by this Court and Hon'ble the Supreme Court, the trial Court

could examine the evidence in the counter claim and the plaintiff had a right to cross-examine all the witnesses, which procedure has been duly followed by the trial Court. Hence the order passed by both the Courts are in accordance with law and the document lease deed stood duly proved.

The main issue involved in the present case *“whether after the defence was struck off and the suit was dismissed, the present plaintiff was given adequate opportunity under Order 8 Rule 5 of CPC to cross-examine the witnesses of the defendants/counter claimants to prove the said licence deed”*. A perusal of the judgment passed by the trial Court and the lower Appellate Court shows that the respondent-Rahul Sachdeva had examined himself as PW-1, his father Raj Kumar as PW-2 and Varun Gagneja a document and finger prints expert Ludhiana was examined as PW-3 and Anil Kumar Sharma a draftsman of Ludhiana was examined as PW-4. PW-1, PW-2 and PW-4 deposed that licence deed was executed between the plaintiff and Rahul Sachdeva, Sangeeta Rani and Sumit Sachdeva. As per the sale deeds Ex. P-1, P-2, P-3, P-4 and P-5, payment was made to the plaintiff and his wife. As per sale deeds, the plaintiff had shown his inability to vacate the property immediately as he was running a dhaba. He sought permission to use the said property on compassionate grounds and he was allowed to use the portion marked as ‘ABCDEF’ strictly on permissible basis without creating any right on the said property. They proved the original licence deed Ex. P-6. PW-3 Varun Gagneja Finger prints and

Handwriting Expert in his report has specifically mentioned that the writer of the disputed signatures has unsuccessfully attempted to disguise that. Even though the attesting witnesses of the licence deed Ex. P-6 were not examined, the licence deed was for eleven months and as per second part of Section 107 of the Transfer of Property Act, 1882 leases of immoveable property for less than one year did not require registration and can be made even by oral arrangement. Section 107 of The Transfer of Property Act, 1882 reads as under:

107. Leases how made-A lease of immoveable property from year to year or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

[All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

[Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee;]

Provided that the State Government may from time to time, by notification in the Official Gazette, direct that leases of immoveable property,

other than leases from year to year or for any term exceeding one year or reserving a yearly rent, or any class of such leases may be made by unregistered instrument or by oral agreement without delivery of possession.]

There was no requirement to prove the said lease deed under Section 68 of the Indian Evidence Act, 1872. Section 68 is the Indian Evidence Act is reproduced as under:

68. Proof of execution of document

required by law to be attested- *If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:*

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied]

In the present case, the licence deed was a document which was not required by law to be attested. It could be proved by

the evidence of any other witnesses apart from the attesting witnesses. Hence it was not obligatory to examine the attesting witnesses Pawan Batra and Kirpal Singh as testimony of these attesting witnesses was not the only evidence by which the document Ex. P-6 could be established. Reference can be made to the judicial pronouncements in the case of **Ram Kishore vs. Ambika Prasad reported in AIR 1966 Allahabad 515** and **Nawal Singh vs. Panchiya Ram an another reported in AIR 1983 Allahabad -1.**

Hence the arguments of the learned counsel for the petitioner that the document Ex. P-6 had not been duly proved by examining the two attesting witnesses Pawan Batra and Kirpal Singh is liable to be rejected.

The second argument of the counsel for the petitioner was that the report Ex. PW-3/A prepared by Finger Prints and Handwriting Expert Sh. Varun Gagneja cannot be considered as in its report he himself has mentioned that he has compared the signature of plaintiff Rajinder Singh with xerox copy of licence deed. Thus it is settled law that the signatures can be compared only from original document. In his report Ex PW 3/A the expert has clearly stated that he had compared the thumb impression from xerox copy of licence deed, standard signatures of Rajinder Singh on the plaint dated 29.3.2007, standard signatures of Rajinder Singh on the affidavit dated 29.3.2007, standard signatures of Rajinder Singh on power of attorney dated 29.3.2007, standard signatures on application under Order 39 Rule 1 and 2 CPC and on affidavit dated 29.3.2007. The

thumb impressions on the photocopy document is admissible in evidence as per the judgment passed by this Court in the case of **Harbans Singh and others vs. Jagir Singh reported in 2006 (1) PLJ 84.** The plaintiff does not dispute the execution of the agreement to sell and the fact that he had received 23 lacs rupees for the suit property. He continued possession of the property as he had no place to shift his articles. His plea that he was a tenant on the shop after the agreement to sell on 1.2.2006 and 1.5.2006 does not survive. Once the plaintiff ceases to be a tenant as per the terms of the licence deed he was to pay Rs. 5 lacs per month to the defendants. Mere fact that he was paying rent of the dhaba would not create a lease deed in his favour.

After hearing counsel for the parties and going through the records of the case, the plaintiff was bound to comply with the orders of the High Court and Supreme Court Ex.P-10 and Ex. P-11. However, he continued with his suit and his defence with the counter claim. Since the sale deed had been duly executed and he had received the sales consideration of Rs. 23 lacs, the only question which the trial Court was required to examine counter claim of the defendants in the scope of Order 8 Rule 5. The defendants have proved the lease deed by examining the necessary witness PW-1 to PW-4. Since the licence deed was for less than a period of one year it did not require registration and as per Section 107 the licence deed could be done orally. Hence, the deposition of all the witnesses have duly proved the execution of the licence deed and even if the

attesting witnesses did not appear, the lease deed stood duly proved. The suit has been dismissed and the counter claim was decreed for possession in favour of the defendants.

In the present case after the defence was struck off on account of non-payment of the licence fee after the dismissal of the SLP in the Supreme Court, the defendant had right to cross-examine the witnesses of the plaintiff but he had no right to lead the evidence of his own. The trial Court proceeded with the suit and rightly came to conclusion that as the document Ex. P-6 was duly proved by the oral testimony of the plaintiff as per Section 107 of the Transfer of Property Act, 1882, the same being for a period less than one year did not require compulsory registration. Hence, there was no requirement to prove said lease deed as per Section 68 of the Evidence Act, 1862.

Reference at this stage can be made to a decision of this Court in **Paramjit Singh Dhillon vs. S.L Khanna and another 2005 (2) RLR 701.** In this case after the expiry of the licence, the suit for eviction was filed and the licensee did not pay the usage charges. It was held that he was not entitled for hearing on merits. In paragraph 8, it was observed as under:

“8. Feeling aggrieved, the plaintiff-appellant has approached this Court with the grievance that his right of hearing has been snatched and his ejectment has been ordered at his back. When the appeal came up for hearing on

12.7.2005, the plaintiff-appellant was not present personally or through his counsel and the matter was adjourned to 16.7.2005 because it was stated by the learned counsel for the plaintiff-appellant that the order dated 14.3.2003 passed in Civil Revision No. 6061 of 2002 and orders 16.5.2005 passed in COCP No. 222 of 2004 have been challenged before the Supreme Court. Another adjournment was granted so as to await the result of the SLP and the matter was posted for 1.8.2005. On the aforementioned date the following orders were passed:-

“In order to establish the bona fide of the defendant-appellant, who was directed by this Court on 14.3.2003 to pay the usage charges of the premises @ Rs. 8360/- per month from March 2000 onwards, liberty is granted to the defendant-appellant to deposit all the arrears, which comes to about 5.50 lacs within a period of one week with the Registrar of this Court. If the aforementioned arrears are paid, then the appeal can be heard on merits.”

The plaintiff does not dispute the execution of the agreement and receiving a sales consideration of Rs.23,00,000/- from the defendants. Hence on account of non-payment of the

licence fee the counter claim of the defendants has been rightly decreed by the lower Appellate Court and there is no substantial question of law which requires consideration for admission of this regular second appeal against the orders passed by the Courts below. Hence the same is dismissed.

March 19, 2015

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**(RITU BAHRI)
JUDGE**