

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 5748 of 2014 (O&M)

Date of decision : October 05, 2015

Krishan Dahiya

... Appellant

vs.

Master Sharwan Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. N.C. Kinra, Advocate
for the appellant.

Mr. S.S. Bahniwal, Advocate
for the respondent-Caveator.

Surinder Gupta, J

This is regular second appeal against the judgment dated 25.11.2013 whereby suit of plaintiff Master Swaran Singh was decreed and the defendant was directed to hand over vacant physical possession of suit property i.e. ground floor of H.No.1452/1, Mahavir Pura, New Railway Road, Gurgaon to the plaintiff.

(In the later part of the judgment, the parties will be referred as plaintiff and defendant as per civil suit).

Plaintiff Master Swaran Singh is father-in-law of defendant Krishan Dahiya. He has alleged that in the year 2006, defendant along with his wife requested for shelter for a short time as their business had ruined at their native place. The plaintiff allowed them to live on the ground floor of his house as licensee. The defendant used to consume alcohol and misbehaved with plaintiff and his wife. He also threatened the plaintiff and asked him to hand over possession and ownership of their house to him by way of gift or otherwise. In August, 2008 he filed civil suit seeking relief of

injunction raising plea of his possession over the suit property as tenant under the plaintiff. He was sent a legal notice dated 9.6.2009 calling upon him to vacate the ground floor of the demised premises but of no avail resulting in filing of the suit.

The defendant claimed himself to be tenant in the demised premises and alleged that plaintiff was residing in a separate house bearing no. 1454 which he sold away in the year 2008 and requested the defendant to accommodate him and his wife. In view of his relationship, the defendant allowed the plaintiff to live on the first floor of the house in a single room. The defendant has been residing in the disputed house at the monthly rent of ₹500/- plus ₹400/- for electricity charges since 1998. The plaintiff wanted to enhance the rent from ₹500/- to ₹2000/- per month which the defendant resisted. In order to pressurize him the instant suit had been filed.

Learned Civil Judge (Jr. Division), Gurgaon discarded the plea taken by the defendant-appellant about the tenancy and observed that he is in possession of the suit property as a licensee. The suit filed by the plaintiff was held as maintainable in view of the observations in the case of ***Surjit Kaur vs. Balwinder Kaur, 2005 (2) HRR 536 (P&H)***.

The appeal filed by the defendant was also dismissed by the first appellate court.

I have heard learned counsel for the appellant and have perused the paper book.

Learned counsel for appellant has assailed the judgment of trial court on two counts. Firstly, that under Section 89 CPC, the case was not referred to arbitration and conciliation, for judicial settlement including settlement through Lok Adalat or mediation. The provisions of Section 89

CPC are mandatory and both the courts below have not taken any steps for compliance of the same. He has further argued that the plaintiff has sought possession of the ground floor of the disputed house as such was required to pay *ad valorem* court fee. He has relied on the observations in the case of ***Shyam Lal vs. Sohan Lal***, AIR 1979 Rajasthan 205.

On careful consideration of above submissions of learned counsel for appellant, I find no substance therein. Section 89 CPC contains the provisions enabling the court to refer the matter for settlement through arbitration and conciliation, judicial settlement or mediation where it appears to the court that there exist element of settlement which may be acceptable to the parties. It is no where the case of the appellant that plaintiff or defendant at any point of time represented to the court that the matter be referred for settlement under Section 89 CPC. In this case, the parties are litigating tooth and nail. Earlier the defendant had filed suit for injunction against the plaintiff. In this suit he is claiming himself to be a tenant in the entire premises of house no. 1452/1, Mahavir Pura, New Railway Road, Gurgaon.

In view of the above facts and circumstances the court may not have thought it appropriate to refer the case for amicable settlement. The provisions of Section 89 CPC are enabling provisions and not mandatory and as such non compliance of the same in no manner refer to any illegality or infirmity in the judgments of the courts below.

On the point of payment of court fee, the courts below have relied upon the observations in the case of ***Surjit Kaur vs. Balwinder Kaur*** (*supra*) where in para 13 it was observed as follows :-

“13. It is also well settled that suit for mandatory injunction would be maintainable after the termination of license by issuing a notice when the licensee has refused to hand over vacant possession. The law imposes an obligation on a licensee to hand over vacant possession to the licensor, failing which a suit for mandatory injunction is maintainable. For the aforementioned proposition, reliance could be placed on a judgment of the Supreme Court in the case of Sant Lal Jain's case (supra). In this case, the observations of the Division Bench in Milka Singh v. Diana, AIR 1964 J&K 99 were approved by the Supreme Court by observing as under :-

“xx	xx	xx	xx
xx	xx	xx	xx
xx	xx	xx	xx

In Milka Singh v. Diana AIR 1964 J&K 99, it has been observed that the principle that once a licensee always a licensee would apply to all kinds of licensee and that it cannot be said that the moment the license is terminated, the licensee's possession becomes that of a trespasser. In that case, one of us (Murtaza Fazal Ali, J, as he then was) speaking for the Division Bench has observed :-

“After the termination of the licence, the licensee is under a clear obligation to surrender his possession to the owner and if fails to do so, we do not see any reason why the licensee cannot be compelled to discharge this obligation by way of a mandatory injunction under S.55 of the Specific Relief Act. We might further mention that even under English law a suit for injunction to evict a licensee has always been held to be maintainable.

Where a licensor approaches the court for an injunction within a reasonable time after the licence is terminated, he is entitled to the injunction.....”

In view of the specific observations of this court in the aforesaid case that if a licensee refuses to hand over the vacant possession after termination of license, the suit for mandatory injunction is maintainable, it is not required to discuss in detail or distinguish the observations in the case of ***Shyam Lal vs. Sohan Lal*** (*supra*).

No other point has been argued by learned counsel for appellant.

On perusal of the paper book and judgment of the courts below, I find no legal or factual infirmity therein calling for any interfere.

No substantial question of law requiring determination arises in this appeal which has no merits and is dismissed.

October 05, 2015

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(Surinder Gupta)
Judge