

RSA No.1430 of 2010 (O&M) & connected case

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1430 OF 2010 (O&M)
Date of Decision: May 20, 2016

Mohar Singh

...Appellant

Versus

Smt. Vidya Devi

...Respondent

(2)

RSA No.450 OF 2010 (O&M)
Date of Decision: May 20, 2016

Smt. Vidya Devi

...Appellant

Versus

Mohar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Amarjit Markan, Advocate
for the appellant in RSA No.1430 of 2010 &
for the respondent in RSA No.450 of 2010.

Mr. Babbar Bhan, Advocate for
Mr. Vinod S. Bhardwaj, Advocate
for the respondent in RSA No.1430 of 2010 &
for the appellant in RSA No.450 of 2010

AUGUSTINE GEORGE MASIH, J. (Oral):

By this order I propose to dispose of two regular second appeals i.e. RSA No.1430 of 2010, preferred by Mohar Singh-defendant, challenging the order passed by the Additional District Judge, Gurgaon, dated 25.08.2009, whereby, the appeal of Smt. Vidya Devi-plaintiff was allowed against the judgment and decree dated 30.03.2007 passed by the Additional Civil Judge(Senior Division), Gurgaon, dismissing the suit of the

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plaintiff and RSA No.450 of 2010 preferred by Smt. Vidya Devi-plaintiff, claiming enhanced rent/*mesne profits* i.e. ₹6500/- per month instead of ₹1800/- per month, as granted by the First Appellate Court.

2. It is the contention of the learned counsel for Mohar Singh-defendant-appellant in RSA No.1430 of 2010 that the judgment and decree passed by the learned Additional District Judge, Gurgaon, dated 25.08.2009 cannot be sustained in the light of the fact that double the rent together with interest could not have been granted by the Court firstly for the reason that the issue with regard to the petitioner being in possession of the premises as a tenant or an unauthorized person, is still pending for consideration before the trial Court in the light of the order dated 27.08.2013 passed by this Court in C.R. No.2223 of 2008, titled as 'Mohar Singh Vs. Smt. Vidya Devi', whereby, this Court has remanded the case back to the trial Court for fresh decision on the said issue. That apart, he contends that the arrears even at the rate of ₹1800/- per month alongwith interest could not have been granted beyond three years prior to the date of filing of the suit and the grant of arrears w.e.f. 28.08.1999, thus, cannot sustain.

3. On the other hand, counsel for the plaintiff-Smt. Vidya Devi submits that the Court has not taken into consideration the fact that the defendant is in illegal possession of the demised premises and has only granted double the amount of the admitted rent and that too in case he is held to be in unauthorized possession of the premises, whereas, it should have been granted at the rate of market rent and in any case, not less than ₹6500/- per month.

4. On considering the submissions made by the counsel for the parties and on going through the impugned judgments, I am of the considered view that admittedly, the question with regard to the defendant being a tenant or in unauthorized possession, is still pending consideration before the trial Court for decision in the light of the order dated 27.08.2013 passed by this Court in CR No.2223 of 2008, thus, it would not be appropriate to comment upon the said aspect. However, keeping in view the fact that the defendant is in possession of the premises and the admitted rent is ₹1800/- per month, the observations of the learned Additional District Judge, Gurgaon, in its judgment and decree dated 25.08.2009 granting the defendant the arrears at the rate of ₹1800/- per month, cannot be faulted with. However, arrears could not have been granted beyond a period of three years from the date of filing of the said suit as it was neither claimed in the suit beyond the said period nor will it be permissible under the law of limitation. The counsel for the defendant has stated that in the light of the order passed by this Court on 19.03.2012, arrears at the rate of ₹1800/- per month for three years preceding the filing of the suit alongwith interest at the rate of 8% per annum, stands deposited, which fact is not disputed by the counsel for the plaintiff.

5. As regards the observation of the learned Additional District Judge, Gurgaon, in the impugned judgment and decree that the plaintiff would be entitled to recover the arrears of *mesne profits* at the rate of ₹3600/- per month, in case the defendant is held to be in unauthorized occupation of the premises, suffice it to say that the issue is still pending

before the trial Court and in case, ultimately it is held that the defendant is in unauthorized possession of the premises, the plaintiff would be entitled to *mesne profits* at that stage as may be determined in that suit, if claimed.

6. The claim of the plaintiff in RSA No.1450 of 2010 that he is entitled to the arrears at the rate of ₹6500/- per month, cannot be accepted in the light of the fact that there is no evidence on record in support of the said assertion and in the absence of any evidence, the prayer as has been made in the appeal preferred by him, cannot be accepted, however, as already observed, the plaintiff may avail of his remedy in the suit which is pending before the trial Court if so advised and the above observations are left open.

7. In view of the above, the judgment and decree as passed by the learned Additional District Judge, Gurgaon, dated 25.08.1999, stands modified to the extent as held above. Both these appeals stand decided accordingly.

8. All the pending misc. applications shall stand disposed of.

May 20, 2016
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE