

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

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Regular Second Appeal No.1089 of 2016 (O&M)
Date of Decision: May 17, 2016

Jagjit Kumar

...Appellant

Versus

Santa Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Dinesh Nagar, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 31.07.2013 passed by the Additional Civil Judge (Senior Division), S.B.S. Nagar, whereby the suit filed by the respondent-plaintiff for mandatory injunction directing the appellant-defendant to stop the user of the demised premises i.e. the shop in the light of the fact that the licence deed which was executed on 11.12.2006 was for a period of 11 months which period has expired but the possession was still with the appellant-defendant with a prayer to deliver the actual and physical possession of the shop in question, has been decreed, appeal against which preferred by the appellant-defendant has been dismissed by the Additional District and Sessions Judge, S.B.S. Nagar, on 18.12.2015.

2. It is the contention of learned counsel for the appellant that the witnesses, who had appeared on behalf of the respondent-plaintiff have not been able to prove the due execution of the licence deed dated 11.12.2006. He asserts that in the absence of the proof of due execution of the licence deed, the decree as has been granted in favour of the respondent-plaintiff, could not have been passed. His assertion is that blank papers were got

signed from the appellant on the pretext of increasing the licence fee and in good faith, the said papers were signed, which papers have been misused and a licence deed dated 11.12.2006 has been got typed on that through a Deed Writer. The said document being a result of fraud, cannot be made the basis for giving relief to the respondent-plaintiff. He contents that the appellant-defendant is in possession of the premises since the last 10 to 12 years and, therefore, there was no question of entering into a licence deed for a specified period and the respondent-plaintiff has approached the Court with unclean hands and, therefore, the suit should have been dismissed on this ground itself.

3. I have considered the submissions made by learned counsel for the appellant and with his able assistance, have gone through the impugned judgments.

4. The first assertion of the counsel for the appellant that the licence deed dated 11.12.2006 has not been proved on record to have been duly executed, cannot be accepted as the Deed Writer Joginder Singh Ghai has appeared as PW-1 and has categorically stated that the licence deed was scribed by him which was read over and explained to the parties in the presence of the witnesses and after admitting the same to be correct, the parties have signed the same. PW-2 Surinder Kumar, who is the marginal witness, has also been examined, who has identified the signatures on the licence deed and has also stated with regard to the due execution of the said deed by the parties. In the light of the above, due execution of the licence deed Exhibit P-1 stood proved.

5. The onus shifted upon the appellant-defendant, after the due

execution stood established of the licence deed, to rebut the same in the light of his positive assertion that blank papers were got signed by him on the pretext of increasing the rent. The best witness would have been his maternal uncle Chander Mohan, who is stated to be one of the signatories to the licence deed, who had approached him as per the plea taken for increase of rent and on his behest, he has signed the blank papers but unfortunately the said witness has not been produced by the appellant-defendant. As a matter of fact, the appellant-defendant has in the pleadings stated that blank papers were got signed from him by Ranjeet Singh son of the respondent-plaintiff but in the evidence he has come out with a plea that it was Chander Mohan, who had got the papers signed from him which is contradictory to the pleadings and the stands, as has been taken therein. The onus having been shifted on the appellant-defendant to prove his version that the signatures were obtained on blank papers which he has failed to discharge, the plea that the blank papers have been misused fraudulently by the respondent-plaintiff to convert it into a licence deed, cannot be accepted.

6. The findings as recorded by the Courts below being based upon the pleadings and the evidence brought on record, cannot be said to be unjustified or in any manner not in accordance with law.

7. No other point has been argued by the counsel for the appellant.

8. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no

perversity or illegality in the same.

9. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

10. In the light of the dismissal of the appeal, the application for stay i.e. CM No.2976-C of 2016, stands disposed of as infructuous.

May 17, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE