

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.3114 of 2016 (O&M)
Date of Decision.14.07.2016

Malkit Chand

.....Appellant

Vs.

Pakhar and others

.....Respondents

Present: Mr. Rajiv Joshi, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether Reporters of local papers 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?

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AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit seeking ejectment by mandatory injunction after revocation of the licence, regarding the suit property, has been decreed by the Courts below.

Mr. Rajiv Joshi, learned counsel for the appellant has raised the following submissions:-

- (i) That the suit for mandatory injunction was not maintainable.
- (ii) That the respondent-plaintiff has not proved the title.
- (iii) That he relies upon the judgment of the Supreme Court in **Nagar Palika Jind Vs. Jagat Singh AIR 1995 1377** in support of aforementioned submissions.
- (iv) That that the jamabandi was not proved in accordance with law.

He further submits both the courts below have committed

illegality and perversity in decreeing the suit failing to appreciate the

aforementioned facts and thus, urges this Court to formulate the substantial questions of law drawn in the memorandum of appeal.

I have heard the counsel appearing for the appellant and appraised the paper book. I will take the argument at the first instance where the judgment of the Supreme Court has been relied upon regarding the maintainability of the suit. The facts enumerated in the judgment in **Nagar Palika** (supra) were in respect of the suit for permanent injunction restraining the defendant from interference whereas the present suit has been filed by invoking provisions of Section 39 of the Specific Relief Act. In a case where the licence is revoked, immediately the suit for mandatory injunction would lie, in view of the *ratio decidendi* culled out in the judgments of the Supreme Court in **Sant Lal Jian Vs. Avtar Singh 1985(2) SCC 332** and **Th. Milka Singh and others Vs. Th. Diana and others AIR 1964 (J&K) 99**. Thus, there is no force in the argument to that extent.

With regard to the issue of ownership and title referred in para 4, the same has been admitted in corresponding paragraph of the written statement. A joint reading of the both would reveal that there is evasive denial with regard to admission, however, the pleadings reveal that the allotment had been admitted but the defendant has set up a family settlement which has not been proved. In civil suits, the onus keep shifting between the parties. Whereas, on the contrary, the respondent-plaintiff had discharged the onus, appellant-defendant had failed to rebut the same. It is admitted position on record that the plaintiff is the father of defendant No.1 and grand-father of defendant Nos.2 and 3. The appellant should thank his stars that the respondent-plaintiff has not claimed the use and occupation charges for the period the appellant had retained the premises, yet has resisted the

has not been devolved by way of settlement, for, the appellant-defendant failed to prove the same.

For the aforementioned reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below, much less, there is no substantial question of law arises for consideration in the second appeal. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

July 14, 2016
Pankaj*