

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

**R.S.A No.393 of 2016 (O&M)
Date of decision : 26.04.2016**

Balbir Singh

..... Appellant

Versus

Pyar Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.S.K.Mahajan, Advocate
for the appellant.

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

DARSHAN SINGH,J

The present appeal has been preferred by the appellant-plaintiff against the judgment and decree dated 05.10.2015 passed by the learned Additional District Judge, Amritsar, whereby the appeal filed by the appellant-plaintiff against the judgment and decree dated 04.02.2013 passed by the learned Civil Judge (Junior Division), Amritsar, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Appellant-plaintiff has filed the suit for injunction restraining the defendants from illegally, unlawfully unauthorizedly and forcibly dispossessing him from the suit property bearing house no.10197 also known as L-10, H. No.68/1, measuring 97 Sq. yds, situated at Gali No. 14, Kot Harnam Dass, Abadi, Tirath Pura, Sultanwind Road, Amritsar except in due course of law.

4. As per the case of the appellant-plaintiff, he is residing in properties no.10197 and 10198 for the last 40 years, which are his ancestral properties. His father Albel Singh purchased the property bearing no.10198 and his uncle (Fufa) Rajinder Singh purchased the property in question bearing no.10197 in the year 1958. He migrated to United Kingdom in between 1960-1965 and handed over the property to the father of plaintiff. The plaintiff was inducted as a tenant by defendant no.1 at a monthly rent of Rs. 80 in the year 1986 when he got married. Since then, he is in possession of the suit property as a tenant and is regularly paying the rent. Defendants no.1 and 2 are the owners of the property in question as they had inherited the same after the demise of Sh.Rajinder Singh. Defendant no.3 is the brother-in-law (Sala) of defendant no.2. Defendant no.3 is instigating defendants no.1 and 2 to forcibly dispossess the plaintiff from the suit property and he wants to grab the same. Hence the suit.

5. Defendants-respondents controverted the pleas raised in the plaint. They denied that the plaintiff is in possession of the suit property as a tenant or the property was ever handed over by Rajinder Singh to the father of the plaintiff. They also denied that the plaintiff was inducted the

suit premises as tenant in the year 1986 as alleged in the plaint. It was further pleaded that the suit property bearing no.10197 has a separate outgress and ingress and is noway linked with the property no.10198. It is further pleaded that the power of attorney has been executed in favour of defendant no.3 to look after the property. With these pleas, the defendants pleaded for dismissal of the suit.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for in the head note of plaint?OPP
2. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD
3. Whether the plaintiff has not come to the Court with clean hands?OPD
4. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit filed by the plaintiff-appellant, vide impugned judgment and decree dated 04.02.2013.

8. Aggrieved with the aforesaid judgment and decree, appellant-plaintiff has preferred the appeal and the same was also dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 05.10.2015. Hence this Regular Second Appeal.

9. I have heard Mr.S.K.Mahajan, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellant contended that the learned Courts below had made out a new case that the

plaintiff was only a caretaker. They had held plaintiff-appellant to be in possession of the suit property. Once, it is established that the plaintiff is in settled possession of the suit property, the defendants have no right to forcibly dispossessed him from the suit property bearing no.10197 and he was entitled for injunction.

11. I have duly considered the aforesaid contentions.

12. It is settled principle of law that the plaintiff cannot take the advantage of the weakness in defendants case to get a decree. The plaintiff has to prove its own case. To support this view reference can be made to case **Punjab Urban Planning & Dev. Authority vs M/S Shiv Saraswati Iron & Steel 1998 (2) R.C.R (Civil) 292**. In the instant case, it is the specific plea of the plaintiff-appellant that he is in possession of the suit property as a tenant and was inducted as a tenant in the suit property in the year 1986 at the monthly rent of Rs. 80.

13. This fact is not disputed that the suit property was the self acquired property of late Rajinder Singh, the husband of respondent no.1 and father of respondent no.2, who had migrated to United Kingdom. It is also not disputed that said Rajinder Singh was the husband of respondent no.1, the aunt (Bua) of the plaintiff-appellant. The appellant-plaintiff has not produced any documentary evidence with respect to the payment of any rent to defendants no.1 and 2. The oral evidence adduced by the plaintiff on this aspect cannot be relied upon as on the one hand the plaintiff has pleaded that defendants no.1 and 2 had never visited the property and on the other hand, his witnesses are deposing that the rent was paid to defendant no.1 in their presence. The plaintiff has not

adduced any evidence to show that any rent was deposited by him in the accounts of the defendant or he had ever paid any rent to their attorney. Plaintiff himself pleaded that late Rajinder Singh along with his family migrated to United Kingdom in between 1960-1965 and handed over the property to his father. In view of this pleading of the plaintiff himself, the conclusion drawn by the learned trial Court that the plaintiff was only a caretaker of the property cannot be stated to be erroneous. The plaintiff has pleaded that he was inducted as a tenant by defendant no.1-Piar Kaur in the year 1986. But, there is no evidence to show that Piar Kaur visited India in the year 1986. Thus, in these circumstances, the appellant-plaintiff has not been able to establish that he is in possession of the suit property as a tenant.

14. Consequently, he is not entitled for any injunction. Thus, no case is made out to interfere with the concurrent findings recorded by the learned Courts below.

15. Resultantly, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

April 26, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**