

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

RSA No.2714 of 2015

Date of decision: 03.03.2016

Ashok Kumar

... Appellant

Versus

Mahesh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sanjay Mittal, Advocate
for the appellant.

AMOL RATTAN SINGH, J.

This is the second appeal, filed by the legal representative of the original defendant, in a suit filed by the five respondents herein, on 23.03.2000, seeking ejectment of the father of the appellant (i.e. the defendant), from the suit property, and for mesne profits for usage of the property.

2. As per the suit instituted, the respondents-plaintiffs claimed to be owners in possession of property measuring 6 kanal 7 marlas, as fully described in the plaint, situated on the Rewari-Delhi road, Tehsil and District Rewari, in terms of the 'jamabandi' (record of rights) for the year 1993-94 and based upon the mutation of inheritance in their favour, entered on 24.11.1998.

The father of the appellants, Gog Raj (hereinafter to be referred to as the defendant), was shown to be in occupation of an area

marked in red, which was stated to be a 'khokha' (temporary booth) measuring 8 ft. x 10 ft., from which he was running a tea stall for a period of two years, on a payment of licence fee of Rs.300/- per month, for the occupation and user of the said booth, on the land owned by the respondents. The land on which the booth, was constructed, was stated to have been taken by the defendant from its previous owner, Sheo Lal, grand-father of the respondents-plaintiffs, but was not vacated thereafter. Eventually, it was stated in the plaint (as per facts taken from the judgment of the learned Civil Judge, Rewari), that extension for a period of two years was given to the defendant to retain the booth, in the year 1992. Earlier, on the basis of permission granted to the defendant, by the late Sheo Lal, he also took a temporary connection from the electricity authority, for the booth.

It was also contended by the respondents-plaintiffs that instead of vacating the premises as requested by them, the defendant started making an illegal encroachment and raised a “chhappar” (structure with a thatched roof) on one side of the “khokha”, thereby allegedly usurping 550 sq. ft. of land.

3. It was further alleged that the defendant had not paid any licence fee for five years and had thus made a mis-user of the premises by opening a place of business of groceries and vegetables.

The plaintiffs had, consequently, as contended, revoked the licence and had issued a notice under postal certificate, in that regard, on 11.11.1999.

The defendant still not having vacated the premises, the suit

was instituted on 23.03.2000, seeking his eviction as also mesne profits of Rs.300/- per month, by way of licence fee for a period of three years prior to the date of filing of the suit, till the date of realization thereof. They also sought mesne profits at the rate of Rs.3000/- per month for illegal encroachment of 550 sq. ft. of land.

4. In the written statement filed by the defendant, other than the usual preliminary objections of maintainability, locus and Court fee etc., it was stated that the suit land would actually be subject to the provisions of the Haryana Rent Restriction Act, 1973.

On merits, it was stated that the area shown in red, in the site plan, marked ABCD, was in possession of the defendant for 40 years, having been taken from Dharambir son of Sheo Lal (father of plaintiffs No.1 to 3) on rent, for a sum of Rs.50/-.

It was contended that on 08.01.1998, the rent of the house and the shop was increased to Rs.100/- per month, which the defendant was paying regularly to Dharambir and others and no rent remained to be paid. It was also claimed that the plaintiffs had no right or title over the property and that they were not the landlords of the defendant.

The agreement to pay licence fee of Rs.300/- per month was also denied, as was any encroachment on the land, which the defendant claimed was proved by the fact that he had taken an electricity connection in respect of the suit land. He also submitted that he had not raised any new construction and in fact, the “chhappar” and bathroom etc. were in existence for a period of 40 years.

5. A replication controverting the written statement having

been filed, the following issues were framed by the learned Additional Civil Judge (Senior Division), Rewari:-

- “1. Whether the plaintiffs are owner in possession of suit property mentioned in para No.1 of the plaint, if so to what effect? OPP
2. Whether defendant is a licensee and has not vacated the suit property as alleged in para no.2 of the plaint and have made encroachment upon area of 550 Sq. feet chapper and has not paid license fee as alleged? OPP
3. Whether the licence of the defendant was revoked and terminated forthwith by plaintiff? OPP
4. Whether the plaintiffs are entitled to recover licence fee are the rate of Rs.300/- per month and also entitled compensation for the use and occupation of the disputed land which is more than 550 Sq. feet in area and mesne profits at the rate of Rs.3000/- per month by making illegal encroachment as alleged? OPP
5. Whether the plaintiff has no locus standi for filing the present suit? OPD
6. Whether the plaintiff has no cause of action for filing the suit? OPD
7. Whether the suit is not maintainable in the present form? OPD
8. Whether the plaintiff stopped from filing the present suit by his act and conduct?OPD
9. Whether the plaintiff has not paid proper court fee on valuation of the disputed property? OPD
10. Whether the plaintiff has concealed the facts of the present case? OPD
11. Whether the suit is not maintainable for non-joinder of necessary party? OPD

12. Relief.”

6. The plaintiffs (respondents herein) examined 10 witnesses, whereas the defendant also examined 10 witnesses, including himself (Gog Raj) as DW10, who also tendered documents, Exs.DA and DB, in evidence.

7. Upon appraisal of the evidence, the learned Additional Civil Judge found that the defendant, Gog Raj, had earlier filed a suit against the father of plaintiffs No.1 to 3 (uncle of plaintiffs No.4 and 5), seeking permanent injunction against him (Dharambir), which was dismissed on 18.07.2006. The claim of the defendant (plaintiff in that suit), Gog Raj, that he was a tenant at the rate of Rs.50/- per month over the suit property, was rejected and he was held to be a licensee over only 8 ft. x 10 ft. of area. The appeal filed by Gog Raj against that judgment, was also dismissed and thereafter, the second appeal (RSA No.1691 of 2007) was also dismissed by this Court vide judgment Ex.DA, holding that the defendants (Decree-Holders), i.e. the present respondents, would not dispossess the plaintiff-JD (Gog Raj) from the suit land except in due course of law. It was also noticed by this Court that the ejectment proceedings were already pending and that the parties would be bound by the decision therein.

Thus, the learned Civil Judge held that the question of Gog Raj (predecessor of the present appellant) being a licensee or tenant had already been settled up to this Court, holding that he was a licensee and as such, that issue could not be raised again. Saying so, issue No.1 was held to be decided in favour of the respondents-plaintiffs herein.

(As a matter of fact, it was issue No.2 which the learned Civil Judge could have held decided in view of the above).

Eventually, even while observing that *res judicata* would not operate in favour of the plaintiffs, the nature of the two suits being different, after consideration of the evidence, the suit was decreed in favour of the plaintiffs.

8. The learned first Appellate Court after considering the evidence and discussing the judgment of the learned Civil Judge, observed that the order of this court, passed in RSA No.1691 of 2007, was to the effect that the defendant, Gog Raj, be not dispossessed, except in due course of law.

Hence, raising a question as to whether or not the plaintiffs (respondents in appeal) were required to issue a fresh notice under Section 106 of the Transfer of Property Act, 1882, it was answered in the negative, holding that in the previous round of litigation, Gog Raj was held to be in possession of the land measuring 8 ft. x 10 ft. as a licensee. PW2, Satbir Singh, Clerk of Shri N.K.Lakhera, Advocate, had proved, it was held, the notice dated 11.11.1999, Ex.PW2/B, issued to Gog Raj revoking his licence and directing him to hand-over vacant possession of the suit land. Ex.PW2/C was shown to be the postal receipt with regard to the notice issued. In any case, Gog Raj himself as DW10, the learned first Appellate Court observed, had admitted that he had received the notice. No reply thereto, as contended by Gog Raj, was produced by him.

9. In view of the above, the learned lower Appellate Court

held that the status of a licensee, held by Gog Raj, stood revoked by issuance of the notice dated 11.11.1999, with no need to issue a fresh notice to do so.

10. The issue with regard to mesne profits being payable only to the extent of Rs.1000/-, rather than Rs.3000/- per month, as held by the Civil Court, was also upheld by the lower Appellate Court.

The first appeal of the present appellant, was consequently dismissed.

11. Mr. Sanjay Mittal, learned counsel appearing for the appellant before this Court, submitted that the appellants' father (defendant) having been admitted to be in possession of the suit property since well before 1992, from the time of the grand-father of the plaintiffs-respondents herein, the Courts below erred in holding the appellants' father to be a mere licensee and not a tenant on the property.

However, on query, learned counsel could not deny that the suit earlier filed by the father of the appellant, i.e. by Gog Raj, against the respondents, seeking permanent injunction against dispossession, was dismissed, with the Courts below holding that he was a licensee. Thereafter, even though in the RSA No.1691 of 2007, this Court held that the appellants' father, i.e. Gog Raj (appellant in that appeal) would not be dispossessed except in accordance with law, there was no reversal by this Court, of the findings to the effect that Gog Raj was not a tenant but only a licensee.

Learned counsel further submitted that with this Court holding in RSA No.1691 of 2007 that the ejectment proceedings, i.e. the

suit out of which the present appeal arises, were pending before the court below and parties would abide by the said decision, showed that the issue with regard to the appellant being a tenant or a licensee was left open to the court to decide. However, the Courts below have simply construed the disposal of the aforesaid regular second appeal to mean that the appellants' father was only a licensee and not a tenant, when actually they (the courts below in these proceedings) had to decide that issue afresh.

Though the argument of learned counsel, at first blush, does not sound unattractive, however, in my opinion, once the appeals filed by both the parties in the earlier round of litigation, i.e. RSA No.1691 of 2007 and RSA No.1171 of 2007, were eventually disposed of by only restraining the present respondents from ejecting the appellants' father (Gog Raj) except in due course of law, with no positive finding recorded to reverse the decree of the Courts below (in that round of litigation), holding Gog Raj to be a licensee, I am in agreement with the reasoning of the learned Additional Civil Judge and the learned Additional District Judge (in the present round of litigation), in that regard.

12. Thus, with Gog Raj having been held to be a licensee, and due notice having been proved to have been issued to him, duly admitted by him, in the suit out of which this appeal arises, the appellant or even his father, could have no right to continue in possession of the suit property, in terms of Section 61 of the Indian Easements Act, 1882.

The said provision is reproduced hereinunder:-

“61. Revocation express or implied.- The revocation of a license may be express or implied.

Illustrations:

a) A, the owner of a field, grants a license to B, to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked.

b) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked.”

Hence, when a licence is deemed to have been revoked, even without a formal notice having to be issued, obviously when such notice is admittedly received by the licensee, the licence stands revoked and as such, the licensee can have no right to continue on the property thereafter.

13. In view of the above, finding no merit in the appeal, it is dismissed *in limine*, with no order as to costs.

03.03.2016

dinesh

(AMOL RATTAN SINGH)
JUDGE