

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

**RSA No. 2905 of 2015(O&M)**

**Date of decision: 22.04.2016**

(i) Nirmal Singh ...Appellant(s)

Versus

Ravinder Kaur ...Respondent(s)

**RSA No. 3026 of 2015(O&M)**

(ii) Nirmal Singh ...Appellant(s)

Versus

Ravinder Kaur ...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN**

Present: Mr. Sarju Puri, Advocate,  
for the appellant(s).

**JITENDRA CHAUHAN, J.**

This regular second appeal has been filed by the plaintiff against the judgment and decree dated 06.01.2015, passed by Additional District Judge, SBS Nagar (for short 'The appellate Court'); and the judgment and decree dated 24.05.2014, passed by Civil Judge (Junior Division), SBS Nagar.

In brief, the plaintiff-appellant filed suit for permanent injunction restraining the defendant from interfering in his possession over the suit property and dispossessing him from the suit property except in due course of law. It was pleaded that he

was tenant over the suit property since February 2007 at a monthly rent of Rs. 100/-. The tenancy was oral and the plaintiff has been paying rent to the defendant regularly, however, no receipt was issued by the defendant. The plaintiff being a tenant cannot be dispossessed forcibly. When the defendant tried to dispossess him, the instant suit was filed.

Upon notice, the defendant appeared and denied the tenancy. On behalf of the defendant, it was pleaded that she is sister of the plaintiff and the suit property was purchased by her vide sale deed dated 16.01.2004 for a consideration of Rs. 3 lacs. She wanted to settle in India but as she was suffering from Breast Cancer, therefore, she continued to reside in England. The plaintiff was inducted as a gratuitous licensee. Due to the conduct of the plaintiff, the licence stood terminated.

In addition to the written statement, the defendant filed counter-claim for mandatory injunction seeking direction to the plaintiff to hand-over the possession of the suit property to her.

After appraisal of the evidence, the learned trial Court dismissed the suit. However, the counter-claim filed by the defendant was accepted. The plaintiff was directed to stop the user of the suit property and hand-over the vacant possession of the same to the defendant within two months from the date of receipt of certified copy of the judgment and decree.

Feeling aggrieved, the defendant filed two civil appeals before the first appellate Court. The first appeal was filed assailing the judgment and decree vide which the suit was dismissed, whereas, another appeal was filed against the decretal of the counter-claim. Vide judgment and decree dated 06.01.2015, passed by the Appellate Court, both the appeals were dismissed. This is how two regular second appeals have come up before this Court at the behest of the plaintiff.

On behalf of the appellant, it is contended that the nature of the licence suggests that it was a lease-deed entered into between the parties. To avoid the rigors of the East Punjab Urban Rent Restriction Act, the instant claim has been laid in the form of present civil suit. When in the licence, there is no condition restricting the use of the land upto the licensee only, the document cannot be termed as a licence. The same acquires the nature of lease irrespective of the nomenclature attached to the document. In support of the contention, reliance has been placed upon authority **Bharat Petroleum Corporation Ltd. Vs. Chembur Service Station 2011(2) S.L.J. (SC) 1172.**

I have heard the learned counsel for the appellant and have gone through the case file.

The case of the plaintiff before the Courts below is that he is tenant over the suit property. However, no rent deed was

executed in writing. The tenancy was allegedly oral. The plaintiff had been paying monthly rent of Rs. 100/-. The oral tenancy was created in February 2007. Thereafter, the plaintiff had been paying rent to the defendant regularly. The plaintiff had also been paying electricity bills. His Voter Id-Card and ration card bear the address of the suit property. The Courts below dismissed the suit holding that tenancy was not proved. Rather, the plaintiff while appearing as PW-1, has admitted that there was no writing between him and the defendant regarding the user of the house and the payment of rent. In the cross-examination, the plaintiff admitted that no receipt in respect of payment of rent was obtained by him from the defendant. He was allowed to stay in the suit property due to trust reposed by the defendant and on account of their relationship. Santokh Singh, PW-2, has also admitted that the defendant had allowed the plaintiff to use the house in dispute due to the relationship and no writing was effected regarding any payment. The plaintiff had agreed in his presence regarding stopping the user of the house whenever required by the defendant. Keeping in view the evidence led by the plaintiff, the Courts below returned a finding that the plaintiff had failed to prove his tenancy over the suit land. Rather the evidence went on to show that the possession of the plaintiff was in the nature of licence. The stand of the plaintiff before the Court below is that of tenant. The contention

raised by the plaintiff-appellant before this Court is that his capacity in the suit property is that of tenant and that too arises from the licence because the licence did not restrict his right upto personal privilege. Both the stands are self-contradictory. On the one hand, the plaintiff claims to be the tenant by virtue of oral tenancy and on the other, he claims to be the tenant by virtue of the licence and seeks to draw his tenancy under the licence by submitting that his tenancy arises out of the licence because the licence did not restrict his user up to the personal privilege. A new plea cannot be allowed to be taken in the regular second appeal. The Courts below have returned a finding that the plaintiff has failed to prove his tenancy over the suit land whereas, the defendant has successfully proved that the plaintiff being her brother was given the suit land as a gratuitous licensee. The moment the defendant filed counter-claim before the trial Court, the licence stood revoked and the plaintiff had no right to remain in possession of the suit land. Otherwise also, the suit of the plaintiff is that he cannot be dispossessed except in due course of law. With the filing of the counter claim by the defendant, the suit of the plaintiff does not survive any more. Since the Courts below have held the nature of possession of the plaintiff to be that of licensee, the counter-claim has rightly been decreed by the Courts below.

The judgment cited **Bharat Petroleum Corporation's case**

**(supra)** is of no help to the appellant/plaintiff because it is nowhere his case that his right of tenancy accrues from the licence granted by the defendant. The plaintiff claimed his right of tenancy on the basis of oral agreement which he failed to prove before the Courts below. Otherwise also, there is no question of law much less substantial question of law in the present regular second appeals.

Consequently, both the appeals are dismissed.

22.04.2016  
SN

**(JITENDRA CHAUHAN)**  
**JUDGE**