

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

R.S.A. No.5000 of 2015 (O&M)

Date of decision: 11.01.2016

Satish and ors.

...Appellants

Versus

Rajbir and ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Aman Bansal, Advocate for the appellants.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 15.05.2015, passed by the learned Additional District Judge, Karnal, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellants, against the judgment and decree dated 28.01.2013, dismissing the suit of the plaintiffs by the learned Civil Judge, Sr. Divn., Karnal, (for short, the 'trial Court'), has been dismissed.

The appellants-plaintiff filed a suit for mandatory injunction directing the respondents-defendants to hand over the vacant possession of the residential house bearing Municipal No.865, Ward No.17 and new Municipal No.942, situated in Ghosian Mohalla, Karnal. The learned trial Court vide judgment and decree dated 28.01.2013 dismissed the suit after

returning findings on the issues Nos.1 to 5 to the effect that the plaintiffs had not locus standi and no cause of actions to file and maintains the said suit.

The appeal filed there against by the plaintiff/appellants was dismissed by the learned first Appellate Court vide judgment and decree dated 15.05.2015. The first Appellate Court affirmed all the findings recorded by the learned trial Court after discussing and evaluating the oral as well as documentary evidence on record.

Hence, this appeal at the behest of the plaintiff/appellants.

On behalf of the appellant, it is contended that the learned trial Court has erred in holding that the appellants-plaintiffs had failed to prove ownership over the property bearing MC No.942 situated in Ghosian Mohalla, Karnal without appreciating the fact that Sh. Chandi Ram, predecessor-in-interest of the appellants-plaintiffs was owner in possession of a house bearing erstwhile Municipal No.865, Ward No.17 and the present Municipal No.942, situated in Mohalla Ghoshian, Karnal. He further states that the ownership rights of the appellants-plaintiffs over the disputed house had been duly proved by Ex.P1 to Ex.P15. The learned Courts below have failed to consider the fact that the stand taken by the respondents-defendants of there being two properties bearing Nos.865 and 942 is factually incorrect as proved by the statement of PW-3 Gopal Krishan, who specifically stated that the properties bearing Nos.865 and 942 are the same. It is further submitted that respondents-

defendants admitted that the property bearing No.942 is in occupation of the appellants.

I have heard the learned counsel for the appellants and carefully gone through the entire record on file.

This Court is of the view that it is a simple suit for mandatory injunction, which is not maintainable. As per the pleadings the father of the defendants, Mam Chand, had approached his maternal uncle Musai Ram permitting him to occupy the house and his family in the disputed house as licensee and Musai Ram being his real maternal uncle acceded to his request and allowed Mam Chand to occupy the house as licensee in the year 1963. Mam Chand expired 27 years ago from the date of filing the suit. This Court is of the opinion that in the given circumstances of this case on the death of Mam Chand, the licence, if it is so, stood automatically revoked, and the successors of Mam Chand i.e. the defendants are deemed to be trespassers or in illegal possession of the house. There is no averment that Musai Ram or his successors allowed the defendants to continue as licensee or granted fresh permission or licence to remain in occupation of the house. The limitation for filing the suit for possession is twelve years. So the suit is not filed within limitation period. Moreover, the suit is not maintainable in the form of suit for mandatory injunction. This has been cleverly done in order to avoid the payment of advelorem court fee on the market value of the house. Besides this, no declaration of ownership by the plaintiff that they

are owners of the property being successors of Chandi Ram has been sought. Mere suit for mandatory injunction is not maintainable against the defendants. So, it is held that the suit is not maintainable in the present form and that the plaintiffs have not affixed advelorem court fee on the market value of the disputed house. The suit is liable to be dismissed on these grounds too.

The next question in the present appeal is qua the legality of the judgments and decrees passed by the learned Courts below without appreciating the evidence placed on record. The plaintiffs claimed that Chandi Ram was the owner of the suit property and they were predecessors-in-interest of the said Chandi Ram but they failed to lead any evidence to prove either of these assertions. In absence of proof of the same, the learned courts below have rightly dismissed the suit of the appellant-plaintiffs. The findings on issue No.1 of both the learned Courts below are affirmed being concurrent findings of facts.

Finding no infirmity in the judgments and decrees of both the learned Courts below are hereby affirmed.

Dismissed.

11.01.2016

ashok

(JITENDRA CHAUHAN)

JUDGE