

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Civil Revision No.7919 of 2016 (O&M)
Date of decision:17.11.2017

Jagtar Singh and another

... Petitioners

Vs.

Babu Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. G.S.Attariwala, Advocate
for the petitioners.

Mr. Vikas Singh, Advocate
for the respondent.

AMIT RAWAL J.

C.M.No.12234-CII-2017

Written statement filed alongwith application is taken on record, subject to all just exceptions. Office to tag the same at the appropriate place.

C.M. stands disposed of.

Civil Revision No.7919 of 2016 (O&M)

The petitioner-plaintiffs are in revision against the impugned order dated 05.10.2016 (Annexure P-10), whereby, the lower Appellate Court in appeal preferred by the defendant against the grant of temporary injunction, in an application under Order 39 Rules 1 and 2 CPC filed by the petitioner/plaintiffs and dismissal of the application under Order 40 Rule 1 CPC preferred by the defendant-respondent, had issued directions to the petitioners to deposit a sum of ₹4,00,000/- per annum, i.e., ₹2,00,000/- in

the month of May and ₹2,00,000/- in the month of November every year as compensation for use and occupation charges of land on the premise that the defendant had leased out the land in question to the petitioner/plaintiffs in the year 2004 on lease money of ₹12,000/- per acre per annum.

Mr. G.S.Attariwala, learned counsel for the petitioner/plaintiffs submitted that the petitioner/plaintiffs are aggrieved of the impugned order aforesaid, whereby, the lower Appellate Court without appreciating the per-pleading of the parties and by drawing the presumption of alleged admission of the lease which was never admitted, had issued the direction for payment of the aforesaid amount as indicated above. He further submitted that the petitioner/plaintiffs preferred a suit dated 26.11.2012, Annexure P-1 (hereinafter referred to as “suit no.1”) claiming the following relief:-

“Suit for declaration that plaintiffs are owners in possession in equal share of land measuring 131 kanal 9 marla bearing khewat no.723 khatauni no.1169 having khasra nos.77//2/2(8-11), 77//3/1(0-4),77//6/2(0-0), 77//7/1(2-10), 77//8/1(0-5), 77//8/2(6-13), 77//9(8-0), 77//12(8-0), 77//13/2(0-19), 77//14(8-0), 77//15/1(6-0), 77//16(8-0), 77//17(8-0), 77//18(8-0), 77//18(8-0), 77//23/(8-10), 77//23/2(4-10), 77//24(8-0), 77//25(8-0), 77//11/2(1-10), 78//18/2/1(0-11), 78//19/1(4-0), 78//20(8-0), 78//21(8-0), 78//22/1(4-1) situated in the revenue estate of village Rajeana Tehsil Baghapurana District Moga having in it residential house constructed in khasra no.77//14, 77//13/2 and 77//13/1, 77/8/2, 77/12 and defendant has no title and interest in the above property AND the registered Gift

Deed document no.2230 dated 29.07.2004 executed by Sadhu Singh son of Hazara Singh father of the plaintiffs is illegal, ineffective, inoperative, null and void against the rights of the plaintiffs on account of being in utter violation of provisions of section 3 and 4 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000 AND land in question being ancestral, coparcenary and Joint Hindu Family Property AND mutation no.2141 dated 30.12.2004 sanctioned on the basis of above Gift Deed is illegal, ineffective and inoperative against the rights of the plaintiffs as coparceners of Sadhu Singh and on account of being his heirs as well AND suit for permanent injunction restraining defendant from taking forcible possession and interfering with peaceful possession of the plaintiffs of the above property AND further suit for permanent injunction restraining defendant from alienating, transferring in any manner and changing the nature of the suit property.”

In the aforesaid suit, an application under Order 39 Rules 1 and 2 CPC seeking a restraint order from taking forcible possession and interfering with peaceful possession of land in question at the hands of defendant except in due course of law was submitted. The defendant also moved an application (Annexure P-5) under Order 40 Rule 1 read with Section 151 CPC for appointment of a Receiver in respect of the suit property which was seriously contested with by filing reply (Annexure P-6).

During the pendency of the suit, the defendant preferred a suit seeking possession of the property on 23.02.2015, Annexure P-7 (hereinafter called as “suit no.2”) alleging therein that the possession of the petitioners in suit land had been permissive and the licence in this regard was revoked and therefore, being unlawful were liable to claim the mesne profit.

The trial Court, vide order dated 20.11.2014 granted the injunction vis-a-vis forcible dis-possession and interference by restraining the defendant in suit no.1 and vis-a-vis, application under Order 40 Rule 1 CPC, the same was dismissed.

The aforesaid order was assailed by Babu Singh, who was defendant in suit no.1 and plaintiff in suit no.2 by filing an appeal No.98 of 23.12.2014 challenging the orders vis-a-vis allowing the interim application and dismissal of the application for appointment of a Receiver.

The lower Appellate Court, without any material evidence or any admission of the plaintiffs in suit no.1 qua property having taken by way of lease, awarded the compensation of ₹4,00,000/- per annum, i.e. by depositing ₹2,00,000/- in the month of May and ₹2,00,000/- in the month of November every year till the disposal of the suit, i.e., from the date of injunction order passed by the trial Court and to clear the arrears within a period of three months from the date of passing of the impugned order, i.e., 05.10.2016, but maintained the injunction against the respondent herein and defendant in suit no.1.

He further submitted that the impugned order qua awarding of compensation of ₹4,00,000/- is not sustainable in the eyes of law on the

following grounds:-

- i) Application for appointment of a Receiver was not maintainable. At the best, defendant in suit no.1, could have moved an application for determination of the mesne profit in accordance with law in suit no.1 being plaintiffs therein.
- ii) In the absence of any evidence, the amount as determined is based upon surmise and conjectures.
- iii) No report of any Tehsildar or concerned Patwari had been placed on record.
- iv) The procedure for determination of the mesne profit has been prescribed under Order 20 Rule 12 CPC.
- v) There was no such prayer on behalf of the respondent for claiming the amount as ordered in the impugned order, therefore, the same is wholly erroneous, illegal and is not liable to be sustained.

Per contra, Mr. Vikas Singh, learned counsel for the respondent, i.e., defendant in suit no.1 and plaintiff in suit no.2 submitted that order under challenge is perfectly legal and justified, much less does not call for any interference. The land in possession of the plaintiffs is not in dispute but the fact remains that they are in illegal possession as permissive possession/licence was revoked. In this background of the matter, the petitioner/plaintiffs are liable to pay the compensation to the defendant for the use and occupation charges. He did not deny the factum of filing of suit for possession, i.e. suit no.2 (Annexure P-7) and claiming the relief of mesne profit, i.e. suit no.1 (Annexure P-1). The amount of compensation, as

determined by the trial Court, is based upon the market rate as the price index and crop unit have increased manifold. The order of the trial Court dismissing the application filed under Order 40 Rule 1 CPC was not sustainable and in this view of the matter, the same was assailed by preferring an appeal being appealable order and thus, urged this Court for dismissal of the revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the contention of Mr.Attariwala, for, filing of civil suit no.2 by the defendant, seeking possession is conceded position on record. Prima facie, neither in the written statement to the civil suit no.2 submitted on behalf of the petitioners being defendants therein or reply to the application under Order 40 Rule 1 CPC, there had been any candid admission vis-a-vis lease of the property. For the sake of brevity, paragraph 4 of the application under Order 40 Rule 1 CPC and corresponding paragraph of the reply read thus:-

“4. That the applicant-defendant after his becoming the owner gave the suit land to the plaintiffs on contract basis (Theka) @ 12000 per acre per annum which was to be increased @ ₹2000/- every year. The permission was also granted to the plaintiffs by the defendant to live in the house in dispute till they could make some alternative arrangements for their residence. The plaintiffs failed to pay the contract money and vacate the house when in the month of October, 2012. When the applicant-defendant revoked the permission and directed them to surrender the possession. In order to save

themselves they filed this false suit. The present rate rent/chakota is ₹32,000/- per acre.

“4. That para no.4 of the application as stated is wrong, incorrect and hence denied. Plaintiffs have been residing in the house and are cultivating the land of their own right. There was no question of revoking the lease as alleged.”

On bare perusal of the aforementioned pleadings, it is evident that plaintiffs in civil suit no.1 never admitted the revocation of lease much less, existence. Similar is the position in the written statement filed in suit no.2. Thus, the lower Appellate Court, in my view, has committed illegality and perversity by prima facie holding that the revocation of lease deed is admitted. Even otherwise, once the respondent/defendant in civil suit no.1 and plaintiffs in civil suit no.2 had claimed the relief of fixing the mesne profit which is evident from perusal of paragraphs 9 and 10 of civil suit no.2. The same read thus:-

“9. That the defendants are cultivating and harvesting the land as tress passers. They can not deprive the plaintiff of his rights and profits accruing from the suit land. The honourable court may appoint a receiver/local commission who may take possession of the suit property and take all accounts of the money/earning from the defendants and then deposit the same in the honourable court- who may decide as to how to distribute the same.

10. That it is a matter of common knowledge that in Punjab, relatives of Non-resident Indians generally illegally grab the

properties owned by N.R.I.s taking advantage of their absence from India. As and when N.R.I.s request to hand over the property to them, false pleas are raised to continue with illegal possession. The same is the case with the plaintiff. The permissive possession of the defendants over the suit land has become illegal and now they are in possession of the suit land as trespassers. They have not paid any license fee and after revocation of the permission/license to occupy the land in the month of October 2011, the defendants are liable to pay mesne profit at the rate of ₹12000/- per annum per acre from the month of October 2011 till they vacate and hand over the possession to the plaintiff. But the plaintiff claims a sum of ₹3.00 lacs as mesne profit for the last three years.”

In my view, the defendant was required to pursue the said relief in his suit but not in the manner and mode as indicated above.

Be that as it may, the entire facts and position of law as noticed above, in my view, require to be re-visited by the lower Appellate Court to determine as to whether it could pass an order of compensation as ordered or in other proceedings.

I would be refraining myself to comment upon the amount of compensation as determined by the Lower Appellate Court as, prima facie, it is not backed by any direct and cogent evidence.

As an upshot of my findings, order of the lower Appellate Court is hereby set aside and the matter is remitted back to the lower Appellate Court for deciding the controversy afresh as raised in the appeal

preferred by the defendant in civil suit no.1 preferably within a period of three months from the date of receipt of a certified copy of this order.

Parties through their counsel are directed to appear before the lower Appellate Court on 20.12.2017.

Accordingly, revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

November 17, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No