

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 2856 of 2017

Date of decision : August 16, 2017

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Sukhwinder Singh

.....Appellant

Versus

Balbir Singh

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Sarju Puri, Advocate for the appellant.

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RITU BAHRI, J.

The appellant-defendant Sukhwinder Singh has come up in appeal against the judgment of the trial Court dated 17.10.2015 passed by the Civil Judge (Junior Division) Shaheed Bhagat Singh Nagar, whereby the suit of the respondent-plaintiff was decreed and the judgment dated 1.9.2016 passed by the District Judge, Shaheed Bhagat Singh Nagar, whereby the appeal against the judgment of the trial Court was dismissed.

The respondent-plaintiff Balbir Singh filed suit stating that he was owner of a property marked by letters ABCDEFGH shown in red colour in the site plan appended with the plaint, wherein the appellant-defendant was inducted as a licensee by the respondent-plaintiff against payment of Rs.3000/- per month from 29.10.2010 to 28.2.2011 and thereafter the license fee was to be enhanced to Rs.3500/- per month. Terms

and conditions of license were reduced into writing vide a deed dated 29.10.2010. The license deed was not to confer any tenancy rights upon appellant-defendant and on expiry of license period on 30.9.2011, appellant-defendant was to cease user and occupation of that property. After 30.9.2011, expiry of period of license, respondent-plaintiff returned to India from abroad and found the appellant-defendant acting against him. He had impleaded respondent-plaintiff in unnecessary litigation by filing suit for perpetual injunction titled "Sukhwinder Singh vs. Balbir Singh". The suit filed by appellant-defendant was dismissed on 20.11.2012. The respondent-plaintiff served appellant-defendant with a legal notice dated 1.11.2012 cancelling/terminating license asking him to deliver possession of the suit property to the plaintiff.

On notice, appellant-defendant introduced himself as a tenant and not as a licensee. Execution of license deed and its contents were denied by him. Version of the appellant-defendant was of being in possession of the suit property for more than 8-10 years well before 2011.

On the pleadings of the parties, following issues were framed by the trial Court :-

- 1. Whether plaintiff is entitled to mandatory injunction as prayed for ? OPP*
- 2. Whether the plaintiff is entitled for recovery as prayed for? OPP*
- 3. Whether the suit is not maintainable in the present form? OPD.*
- 4. Whether the plaintiff has no locus standi to file the present suit? OPD*

5. *Whether the plaintiff is barred by his act and conduct principle of estoppel waiver and acquiescence to file the present suit? OPD*
6. *Whether the suit is bad for misjoinder and non-joinder of necessary parties? OPD*
7. *Relief.*

Both the Courts after going through the evidence have rendered concurrent finding of fact that license deed Ex.P-1 was admitted by Sukhwinder Singh appellant-defendant during his cross-examination. He identified his photograph and signatures and thumb marks on license deed (Ex.P1) at Mark A, Mark B and Mark C. He admitted of having no dispute of any kind, whatsoever, with either of the attesting witnesses of Ex.P-1 Sohan Singh and Varinder Singh or even with scribe of Ex.P-1 PW-3 Hari Kishan Agnihotri. From the depositions of other PWs and Hari Kishan Agnihotri, who was scribe of Ex. P-1 and admission of appellant-defendant himself, execution of the license deed Ex. P-1 was duly established. The serving of the notice Ex. P-4 for terminating the licence has also been duly proved. Entry of the license deed was made in register of the deed writer at serial no.976 dated 29.10.2010 which was also signed by the parties and the attesting witnesses in each other's presence. The stand taken by the appellant-defendant that his signatures were taken on blank papers which were later converted into license deed Ex. P-1 required that the onus was on him to prove his stand. In his cross-examination, he stated that due to the continuous business dealings with the respondent-plaintiff, he had appended his signatures on blank papers, no evidence was brought on record by the appellant-defendant to prove his stand. He deposed that he could not

remember whether he had signed on blank papers which were later converted into license deed (Ex.P.1). Moreover, he never initiated any legal action against the respondent-plaintiff, deed writer or attesting witnesses for doing this. In his written statement and his sworn affidavit (Ex. DW1/A), it was stated that the suit property was taken on rent by him. However, no rent receipt was produced by him to show that any rent had been accepted by the respondent-plaintiff. Termination of the license was established by the respondent-plaintiff on account of legal notice Ex. P-4 and postal receipts Ex. P-5 and Ex.P-6. DW-1 Sukhwinder Singh admitted the service of legal notice Ex.P-4 in his cross-examination. He further stated that he had filed a suit for permanent injunction prior to receipt of any notice from the respondent-plaintiff and further admitted that he did not reply to the legal notice (Ex.P-4). The license expired firstly as per the license deed (Ex.P-1) on 30.9.2011 and thereafter upon service of notice (Ex.P-4) on 1.11.2012. In view of the above said evidence, the findings on issue no.1 were returned in favour of the respondent-plaintiff. So the execution of the license deed was proved as per the contents of the lease deed

Counsel for the appellant-defendant has vehemently argued that the suit filed by the respondent-plaintiff was filed as a counter blast to the suit for permanent injunction filed by the appellant-defendant. The appellant-defendant was occupying the property as a tenant. The argument of the counsel for the appellant-defendant carry no weight as appellant-defendant Sukhwinder Singh in his cross-examination has admitted the execution of the license deed EX.P-1. He identified his photographs and signatures and thumb marks on license deed (Ex.P-1) at Mark A, Mark B and Mark C. His stand that his signatures were obtained on blank papers by

the respondent-plaintiff was also rightly rejected by both the Courts as once the license deed carried his signatures and thumb impressions coupled with the depositions of attesting witnesses Sohan Singh and Varinder Singh or even scribe of Ex.P-1 PW-3 Hari Kishan Agnihotri, the execution of the licence deed stood proved. The appellant-defendant could not lead any evidence to show that the license deed carried ambiguous terms and it was actually a rent deed as no receipt of rent was actually produced by him. The Supreme Court in the case of **Delta International Ltd. vs. Shyam Sunder Ganeriwala 1999 (2) RCR (Civil) 471** has laid down the ratio as to how intention of the party who is to create license has to be considered.

In the license deed Ex.P-1, the words used for the payment for remuneration was not rent but compensation. It was further stated therein that the licensee i.e the appellant-defendant had orally requested the licensing authority i.e the respondent-plaintiff for using the suit property which was acceded to by the respondent-plaintiff. Since the intention of the party was not to accept rent, therefore, the appellant-defendant was held to be neither a tenant nor entitled to any tenancy rights in the suit property. The actual control and possession vested with the respondent-plaintiff. Reference was laid on **Delhi Gate Service Pvt. Ltd. vs. Caltex (India) 1962 PLR 559**, wherein it has been held that where a licensee who was in occupation of certain premises under an agreement refused to leave the premises on the termination of the agreement, a suit under Section 55 of the Specific Relief Act for the grant of a mandatory permanent injunction can be instituted against the licensee. In **Sohan Singh v. Piara Singh 2000 (3) Recent Civil Reports 149**, it was held that it is not necessary on the part of licensor to file a regular suit for possession by paying Court fee on market

value of property. A decree for mandatory injunction can always be passed against a licensee whose possession is permissive.

In the present case, the ratio of the above said two judgments would be applicable. Execution of the license deed Ex.P-1 had been duly proved by examining scribe PW-3 Hari Kishan Agnihotri and the attesting witnesses Sohan Singh and Varinder Singh and moreover the admissions made by the appellant-defendant himself. The contents of the lease deed Ex.P-1 were clear enough. Moreover, the intention of the appellant-defendant is further clear that he had filed a civil suit for permanent injunction and on the basis of the statement of the respondent-plaintiff Balbir Singh, his suit was dismissed on 20.11.2012.

In view of all that has been discussed above, no substantial question of law arises for determination in the present regular second appeal. Interference of this Court is not warranted in the judgments passed by the Courts below as no illegality or infirmity is found in them. Hence the present regular second appeal is dismissed.

16.8.2017*ritu***(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No