

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

RSA No.1124 of 1987 (O&M)

Date of decision:26.11.2018

Megh Raj

... Appellant

Vs.

Municipal Committee, Raman Mandi

... Respondent

RSA No.2881 of 1988 (O&M)

Roshni Devi

... Appellant

Vs.

Municipal Committee, Raman Mandi

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- None for the appellant (in RSA No.1124 of 1987).

Mr. Shantanu Bansal, Advocate
for the appellant (in RSA No.2881 of 1988).

Mr. S.C.Pathela, Advocate
for the respondent.

AMIT RAWAL J.

This order of mine shall dispose of Regular Second Appeals bearing Nos. 1124 of 1987 and 2881 of 1988.

RSA No.1124 of 1987 is directed at the instance of the plaintiff who was successful before the trial Court but against the judgment and decree of Lower Appellate Court whereby, appeal of the Municipal Committee Raman Mandi was allowed and judgment and decree of the trial

Court was reversed. RSA No. 2881 of 1988 is directed against the judgments and decrees of both the Courts below, whereby, the suit filed by the plaintiff has dismissed.

Since identical question of facts and law are involved, therefore, both the appeals are decided together. For the sake of convenience, the facts are being taken from RSA No.1124 of 1987.

The appellant-plaintiff instituted the suit for injunction restraining the Municipality Committee/defendant from realising the enhanced rent or surcharge fee at the rate of 50% and 15% for the years 1981-82, 1982-83 and dispossession from the plot bearing nos.176-A and 173-B which had allegedly been taken from the defendant on lease at the rate of Rs.448/- and Rs.427/- per annum respectively. The Municipal Committee served a notice dated 29.06.1983 for increasing the rent on the premise that plaintiff had raised balcony/chobara on the stall in question, which was not sustainable, as the plaintiff had taken the land on lease in open auction from the defendant at the rate of one N.P. per square foot. There was no agreement that the Municipal Committee could increase the rent. Even no opportunity of hearing was given and therefore, sought the relief as claimed above.

The Municipal Committee/defendant opposed the suit by raising an objection qua maintainability of the suit as per non-service of notice under Section 49 of the Punjab Municipal Act and relied upon the instructions of the Local Self Government Punjab for charging the enhanced rent at the rate of 15% after every 3 years. The reliance was laid upon the

resolution No.136 dated 02.05.1974 drawing the powers to seek the enhancement of rent.

Since the parties were at variance, the trial Court framed as many as seven issues including the issue of Relief. Both the parties brought on record the documentary evidence.

There is no representation on behalf of learned counsel for the appellant in RSA No.1124 of 1987.

Mr.Shantanu Bansal, learned counsel for the appellant (in RSA No.2881 of 1988) submitted that judgments and decrees of both the Courts below are not sustainable in the eyes of law as the injunction qua forcible interference and dispossession on the basis of long and settled possession cannot be interfered with, except in due course of law. The conferring the status of licensee by both the Courts below is neither here nor there, but conjectural. The ejectment can only be sought by resorting to the remedy available under Local Act.

Mr. S.C.Pathela, learned counsel for the respondent submitted that there is no illegality and perversity in the judgment and decree under challenge and prays for dismissal of the appeals.

I am afraid the aforementioned arguments are not sustainable as factum of raising of chobara and chabutra was not denied. The lease was only for one year, therefore, the plaintiff could not attain the possession for infinite period. In such circumstance, under the garb of possession, the plaintiff had an audacity of laying challenge to the enhancement of rent. Had the enhanced rent been not challenged, perhaps there would have been

some force for granting the protection vis-a-vis possession. It is settled law, a person who seeks equity must do equity. Such person cannot be permitted to retain the premises by dictating his own terms. On account of non-payment of enhanced rent, the license is always revocable. It has also not been brought to the notice of this Court whether after lapse of so many years the plaintiff is in possession or paying the rent or not.

No ground for interference is made out in the impugned judgment and decree of the Lower Appellate Court in RSA No.1124 of 1987, much less judgments and decrees of both the Courts below in RSA No.2881 of 1988.

Accordingly, the appeals are dismissed.

(AMIT RAWAL)
JUDGE

November 26, 2018
savita

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