

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3081 of 2016 (O&M)

Date of Decision: January 23, 2018

Rajinder Singh

...Appellant

Versus

Ajit Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Sharad Aggarwal, Advocate,
for the appellant.

Mr.Brijender Kaushik, Advocate &
Mr.Raj Kumar Rana, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

CM No.8245-C of 2016

For the reasons mentioned in the application, which is supported by an affidavit, delay of 26 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.3081 of 2016

Appellant-defendant-son is in Regular Second Appeal against the concurrent findings of the Courts below rendered in a suit for mandatory injunction filed by the respondent-plaintiff seeking direction to hand over vacate possession of the property marked as "ABCD" and "EFGHIJ" shown in red colour in the site plan consisting of one room, one kitchen, Veranda, one shop situated in Khasra No.30//24, 25/1, 40//4 at Village Mandaaur, Tehsil and District Ambala and also for claiming mesne profits at the rate

of ₹5,000/- from the date of filing of the suit till realisation.

Mr.Sharad Aggarwal, learned counsel for the appellant-defendant submits that the respondent-plaintiff, father of the appellant, instituted the aforementioned suit claiming possession on the ground that he is owner of the property and the appellant-defendant was permitted to use the premises. In fact, the description of the property given in the plaint was not as per the factual position on record as other part of the property belonged to the mother, which is reflected from marked document, Annexure A-1, i.e., compromise/ family settlement and in the absence of the identification of the property, as per essential requirement of provisions of Order 7 Rule 1 CPC, the suit was liable to be dismissed.

He further submits that the trial Court did not grant the mesne profits in the absence of any evidence led by the respondent-plaintiff, but the Lower Appellate Court committed illegality and perversity in granting the mesne profits in the absence of evidence. Respondent-plaintiff himself stated that the market rate of use and occupation was ₹5,000/- per month only and, thus, urges this Court for setting-aside the impugned judgments and decrees of the Courts below.

Mr.Bijender Kaushik and Mr.Raj Kumar Rana, learned counsel for the respondent-plaintiff submit that there is a categoric admission of the appellant-defendant when subjected to cross-examination that he was permitted to use the premises in dispute by his father, thus, the permissible possession and occupation has not been controverted. Reliance on the alleged compromise is neither here nor there in the absence of any proof. No documentary evidence can be looked into unless and until the same is proved in accordance with law. No application for leading secondary

evidence has been placed on record and, thus, urge this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the contention of the learned counsel for the appellant-defendant as regards the possession part is concerned, both the Courts below referred to the candid admission at the time of having inducted into the premises by the father for a specified period. It is settled law that the status of a person in the absence of a licence cannot be presumed to be of owner and tenant and on request if he fails to vacate the premises, remedy is to file a suit for mandatory injunction and unless and until the specified time is left, remedy is for suit for possession.

In view of the candid admission of the appellant-defendant, I am of the view that the decree of handing over the possession of the property is perfectly legal and justified and cannot be faulted with.

As regards the mesne profits at the rate of ₹5,000/- per month, which has been rejected by the trial Court, I am afraid there is no order regarding awarding of mesne profits, therefore, argument of Mr.Sharad Aggarwal is wholly misplaced and rejected.

Resultantly, the appeal is dismissed by upholding the judgments and decrees of the Courts below, whereby the appellant-defendant has been directed to hand over the vacant possession of the property.

January 23, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No