

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

Date of decision: 20.04.2018

1. RSA No.1888 of 2015 (O&M)

Ram Lalarakh

.....Appellant

Versus

Manik Chand and others

.....Respondents

2. RSA No.2694 of 2015 (O&M)

Ram Lalarakh

.....Appellant

Versus

Manik Chand and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. Parminder Singh, Advocate,
for Mr. R.S. Rawat, Advocate,
for the appellant(s).**

Ritu Bahri, J.

This judgment shall dispose of RSA No.1888 of 2015 and RSA No.2694 of 2015 together as both the appeals have arisen out of one judgment. For reference, facts are being taken from RSA No.1888 of 2015.

RSA No.1888 of 2015 has been filed against the judgment of reversal dated 01.09.2014 passed by the Additional District Judge, Chandigarh, whereby appeal filed by plaintiff (respondent No.1 herein) against the judgment & decree dated 19.08.2010 passed by the Civil Judge (Junior Division), Chandigarh, has been accepted and suit filed by the plaintiff for declaration, has been decreed.

Manik Chand-plaintiff (respondent No.1 herein) filed the aforesaid suit for declaration to the effect that he and defendant No.1 were co-owners in equal shares of House No.194, Bapu Dham Colony, Phase-I, Sector 26, Chandigarh with subsequent relief of permanent injunction. It was pleaded that plaintiff and defendant No.1 were residing together in the jhuggie in Industrial Area, Chandigarh since 1971. The Chandigarh Administration had conducted survey several times with an intention to allot houses for rehabilitation of the poor people. It was found that plaintiff and defendant No.1 were residing together in the temporary jhuggie. Accordingly, the licence was issued in the name of both the plaintiff and defendant No.1. Licence fee was being deposited in the join names of plaintiff and defendant No.1 with the Estate Office. An electric connection obtained in the house in question was also in their names. Thereafter, both of them had raised construction in their respective portions from their own funds independently and were residing therein. Plaintiff had alleged that defendant No.1 (appellant herein) threatened to dispossess him from the house in dispute forcibly by claiming himself to be the sole owner of the house in question. It has been further pleaded that although defendant No.2-Estate Officer had issued licence in the names of both the plaintiff and defendant No.1, but liability to pay the licence has been fixed upon defendant No.1. The licence fee was being contributed by both of them equally. Therefore, plaintiff was claiming the relief of permanent injunction restraining defendant No.1 to dispossess the plaintiff from the portion i.e. two rooms with latrine on the ground floor and one room on the first floor of the house in dispute. Hence, the suit.

Upon notice, defendant No.1 (appellant herein) filed written

statement taking preliminary objection that the house in question was allotted to him by the U.T. Administration and plaintiff had no right, title or interest in the said house. Plaintiff and defendant No.1 belonged to the same area and due to this reason, plaintiff was allowed to stay with defendant No.1. It was further stated that the house in question was not allotted to the plaintiff. The allotment was made by U.T. Administration only to the persons, who were eligible for the allotment after verifying various documents. It was specifically stated that no allotment was made in favour of the plaintiff. All other allegations levelled by the plaintiff in the plaint were denied and prayer for dismissal of the suit was made.

Along with the written statement, defendant No.1 also filed a counter claim, stating therein that possession of the plaintiff was of a licensee. He was not only misbehaving with defendant No.1, but was not allowing him to use water and electricity. Therefore, he did not want to keep the plaintiff with him as a licensee. It was prayed that the plaintiff be directed to vacate the house in question and hand over the vacant possession of the same to defendant No.1.

Defendant No.2 filed a separate written statements taking preliminary objections that the present suit deserves dismissal on the ground that the plaintiff has no right to claim allotment as the licence was issued in favour of Sh. Lalarakh-defendant No.1. Plaintiff was only one of the family member of defendant No.1. No allotment had been made in favour of the plaintiff. Mere issuance of a receipt, which was issued inadvertently, gave no right to the plaintiff to claim allotment. On merit, it was stated that defendant No.1 was the actual licence holder and resident of the house in question. The said transit site was allotted to defendant No.1 vide letter

dated 08.10.1975 on the basis of survey conducted by the Chandigarh Administration from time to time. Even the application for allotment was submitted and signed by defendant No.1.

Defendant No.3-Municipal Corporation, Chandigarh also filed separate written statement praying dismissal of the suit.

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

1. Whether the plaintiff is entitled to the declaration as prayed for? OPP
2. Whether the plaintiff is entitled to the injunction as prayed for? OPP
3. Whether there was no cause of action to file the present suit to the plaintiff? OPD
4. Relief.

Trial Court, after going through the evidence led by the parties, observed that in this case, two allotment letters have been produced. Plaintiff had examined Suresh Kumar (PW-4), who supported the case of the plaintiff and produced one document Ex.PW4/1 stating the same to be the allotment letter issued by the department jointly in the name of Manik Chand and Ram Lalarakh. However, during cross-examination, this witness took a contradictory stand by stating that Ex.DA was the original allotment letter and the same was in the name of plaintiff. He further stated that application for allotment was received from Ram Lalarakh. He admitted the documents Ex. DB and Ex.DC, which were photocopy of the affidavit given by defendant-Ram Lalarakh. This witness also admitted that vide application Ex.DD, defendant No.1 had made a request to change site No.191 to 194 as site No.193 had already been allotted to Ram Sewak. In

this background, site No.194 was allotted to defendant No.1. Vide receipt

Ex.DE, the amount had been deposited by defendant No.1 only. Name of Manik Chand was not mentioned in the entry against Book No.2602/62 in the receipt register brought by Suresh Kumar (PW-4). He further stated that he had never seen the original allotment letter Ex.PW4/1 produced by the plaintiff. This witness was never re-examined by the plaintiff despite the fact that he had changed his stand during cross-examination. He had admitted all the documents produced by defendant No.1 and denied existence of the original allotment letter Ex.PW4/1. Trial Court further held that issuance of electricity connection jointly in the name of plaintiff and defendant No.1 does not prove his ownership with respect to the house in question. With the above observations, trial Court dismissed the suit.

The lower Appellate Court, on appeal, has reversed the finding of the trial Court and held that as per documents Ex.PW4/1 and Ex.P7, site No.194 was jointly allotted to the plaintiff and defendant No.1. Document Ex.DA showed that defendant No.1 was allotted transit site No.191 in Transit Camp, Sector 26, Chandigarh as a licensee on monthly rent of Rs10/- and this allotment was made vide letter dated 08.10.1974. As per letter Ex.DD, defendant No.1 was allotted site No.191 and in his application dated 27.01.1978, defendant No.1 had mentioned that one Ram Sewak had forcibly constructed the above plot for his residential purposes, so he be permitted to construct plot No.194. Accordingly, the file was moved in the Estate Office and in the order dated 23.05.1978, it was categorically mentioned that site No.191, Sector 26, Chandigarh was allotted to defendant No.1 i.e. Ram Lalarakh during September/November, 1975 against Jhuggi. It was mentioned that site No.191 was allotted to defendant No.1. There is no specific order of the concerned authorities regarding the change of

tenement of site No.191 to 194.

Moreover, letter Ex.P7 had been issued by the Estate Office, U.T., Chandigarh in the wake of information sought by the plaintiff under the Right to Information Act, 2005. In this letter, it is categorically mentioned that tenement site No.194, Part-I, Bapu Dham Colony, Sector 26, Chandigarh, was allotted to Ram Lalarakh and Manik Chand. In this letter, date is recorded as 02.10.1975. Terms and conditions of this letter are the same, which are of allotment letter Ex.DA of tenement site No.191 issued in favour of defendant No.1. Lower Appellate Court has further observed that though, Suresh Kumar, Junioir Assistant Estate Office (PW-4) has stated that he had not seen the original allotment letter Ex.PW4/1 in his record, at the same time, he had admitted the photocopies of documents Ex.DA, Ex.DB, Ex.DC and Ex.DD. However, documents Ex.DA and Ex.DD relate to site No.191 and not 194. So, when allotment had been made jointly in favour of plaintiff and defendant No.1 vide letter Ex.PW1/1, then it could not be said that site No.194 was allotted to defendant No.1 only. Most important aspect of the case noticed by the lower Appellate Court was that when defendant No.1 had appeared as DW-1, he stated that the plaintiff was residing in House No.194. The allotment was made in the year 1975 and since then, plaintiff was residing in the said house, which further shows that tenement site No.194 was jointly allotted to the plaintiff and defendant No.1. Defendant No.1 had admitted the document Ex.P1, which is a card carrying group photograph of licensee and names of Ram Lalarakh and Manik Chand as well. He also admitted the survey report Ex.PW4/2, wherein name of the plaintiff is mentioned along with his name. He had also admitted that in the file, which was brought by the Estate Office, there was

joint application form and there were cuttings in the same. After seeing the electricity bill installed in the house in question, defendant No.1 (DW-1) had admitted that it was in the name of plaintiff. Copies of electricity bills Ex.P8 and Ex.P9 showed that electricity meter was installed in the joint name of Ram Lalarakh and Manik Chand. Those bills pertained to the year 2001. He further admitted that on 06.05.2002, he made an application for installing the electricity connection in House No.194, Bapu Dham Colony. Vide letter Ex.DB, issued by the Assistant Executive Engineer, Electricity Operation, Sub Division No.II, Chandigarh, he was told that he could get a sub-meter installed at his residence from the licensed Electrical Contractor because one electricity connection was already given by the department and second meter was not permissible. DW-1 had admitted that there were two electricity connections in the house in question, one in his name and another in the name of plaintiff, which shows that site No.194 was jointly allotted to plaintiff and defendant No.1. This fact was further substantiated by Charanjit Singh, Junior Engineer, Municipal Corporation, Chandigarh (DW-3), who had stated that account pertaining to 102-2618/0194 AOX was jointly held by Manik Chand and Ram Lalarakh and the said account is still existing in the name of the parties. During cross-examination, he stated that he had seen the allotment letter of the premises jointly in the name of plaintiff and defendant No.1. Ultimately, the lower Appellate Court decreed the suit of the plaintiff keeping in view the deposition made by Suresh Kumar (PW-4) and admissions made by defendant No.1 while appearing as DW-1.

After going through the judgments passed by both the Courts, this

Court is of the view that plaintiff-respondent No.1 has been able to prove

that he (plaintiff) and defendant No.1 are co-owners in equal share of the house in question, as the same has been allotted in their names jointly. On the other hand, defendant No.1 has failed to lead any cogent and convincing evidence to prove his case. The impugned judgment passed by the lower appellate Court does not suffer from any illegality, much less perversity, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Resultantly, both the appeal i.e. RSA No.1888 of 2015 and RSA No.2694 of 2015 are dismissed.

20.04.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No