

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

**R.S.A No.5668 of 2016(O&M)
Date of decision :21.08.2018**

Raj Kumar

..... Appellant

Versus

Punjab State through Collector, Gurdaspur and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Aman Dhir, Advocate
for the applicant-appellant.

LISA GILL,J

CM-14834-C of 2016.

Heard.

Keeping in view the averments in the application duly supported by an affidavit as well as arguments addressed, delay of 70 days in re-filing of this appeal is condoned.

Application is disposed of.

RSA No.5668 of 2016.

Present appeal has been filed against the judgment and decree dated 04.12.2014 passed by the learned Civil Judge (Jr. Division), Pathankot, whereby the suit filed by the appellant-plaintiff has been dismissed as well as judgment and decree dated 01.12.2015, passed by the learned District Judge, Pathankot, whereby his appeal has also been dismissed.

Brief facts necessary for the adjudication of the case are that

appellant-plaintiff filed a suit for declaration to the effect that order of May 2009, directing eviction of the appellant-plaintiff from House No. 24-HIG, Housing Board Colony, Dhangu Road, Pathankot, is illegal, null, void and discriminatory with consequential relief of permanent injunction restraining defendants-respondents from dispossessing him from the said residential house. It was pleaded that the appellant had repaired the abvoesaid house by spending huge amount thereon, making it fit for residence. Before taking possession of the house, plaintiff had requested respondent no.2- Punjab Urban Planning and Development Authority (PUDA) for allotment of the house on a fixed price under policy dated 26.03.1999. Appellant made various requests to the competent authority from time to time for allotment, but no final decision was taken on his request. Amount of ₹6000/- vide Draft No. O.B.C Bank A/C No. A-96 dated 06.12.1997 was submitted by him for allotment of the house. Appellant also submitted his consent for allotment of the house by way of affidavit dated 11.06.2009. However, the order of eviction has been illegally passed. Therefore, the present suit was filed.

Respondent-defendants contested the suit taking various preliminary objections and denying the averments on merits specifically pleading that the Civil Court had no jurisdiction to try and hear the present suit. Necessary party i.e. Estate Officer of PUDA, it was submitted was not impleaded. The appellant, it was stated was neither an allottee or purchaser of the house in dispute, but an unauthorised occupant thereof. Respondents claimed that the plaintiff-appellant had earlier taken forcible possession of House No. 25/2 MIG, and intimated

the authorities vide letter dated 05.12.1997 that he is living in the said house as a migrant, he is ready to pay ₹500/- per month as installment, therefore, the said house be allotted to him and a draft of ₹6000/- which is not an amount fixed by any of the authorities was sent by him. Draft dated 06.12.1997 was duly returned to the appellant alongwith communication dated 29.08.2000. The appellant-plaintiff, it was pleaded took forcible possession of the present house in question i.e. House No. 24 HIG. This house was never allotted to the appellant nor possession of the same was delivered to him by any authorised official of PUDA. Tilak Raj, Junior Engineer (JE), was not authorized to deliver the possession. An application dated 26.03.1999 was submitted by the appellant for allotment of House No. 24 MIG. Competent Authority i.e. PUDA intimated the plaintiff vide letter dated 19.08.1999 that in case he is ready to pay the prevalent tentative price of ₹7,62,000/- of the house in question, he should convey his consent thereto within 15 days. The appellant, it was stated did not reply thereto. Notice dated 06.08.2007 was served upon the appellant calling upon him to vacate the house in question within 30 days. It was further pleaded that the eviction order dated 27.05.2009, was thus rightly passed the appellant being an unauthorized occupant of the house in question.

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

1. Whether the plaintiff is entitled to declaration as prayed for?OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP
3. Whether the suit of the plaintiff is not maintainable?

OPD

4. Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence of record held that the appellant-plaintiff was in unauthorized possession of the suit property without any right. Therefore, the suit filed by the appellant-plaintiff was dismissed.

Learned District Judge, Pathankot, vide impugned judgement and decree dated 01.12.2015, while dismissing the appeal filed by the appellant-plaintiff held that the appellant has miserably failed to prove allotment of the flat in his favour or that he submitted his consent for allotment within the period granted to him.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently argues that the appellant is a terrorist affected person. He is living in the said HIG house with his family. The possession of the House No. 24-HIG was delivered to him by Tilak Raj (JE). Moreover, in response to the communication dated 19.08.1999 (Ex.P-11), the appellant submitted his consent for the allotment, though after the stipulated period of 15 days as well as with a rider that he is ready to pay the amount at the old rates. Learned counsel further contends that his application for allotment of the plot/flat/house has not been decided till date therefore he is entitled to retain possession of the premises. It is thus prayed that the impugned judgements and decrees be set aside.

I have heard learned counsel for the appellant and have gone through the photocopy of record furnished in Court today.

It is not in dispute that allotment letter of the house in question was never issued in favour of the appellant, who has deposed as PW-1. Appellant in his testimony before the learned trial Court has admitted that there is no such allotment letter. There is no order authorizing Tilak Raj (JE) to hand over possession of the premises to the appellant. PW-2-Tilak Raj, in his cross-examination admitted that he was not an authorized or competent person to handover the possession of the premises in question. No letter of allotment was admittedly issued in favour of the appellant. PW-2 further admitted that he had no authority whatsoever to issue letter Ex.P-1 in favour of the appellant. Therefore, it is rightly held by both the learned Courts below that the appellant is in unauthorized possession of the premises in question.

It is relevant to note that in response to the communication by the appellant seeking allotment of the premises in question, he was duly informed by the authorities vide letters Ex.P-7 dated 08.10.1999 and Ex.P-11 dated 19.08.1999 that the tentative price of the premises was fixed as ₹7,62,000/- and in case the same was acceptable to him, he should submit his consent within a period of 15 days from the date of receipt of the said letters. There is no evidence whatsoever on record to suggest that the appellant ever gave his consent for allotment of the aid premises at the rate of ₹7,62,000/- within 15 days of the issuance of the abovesaid letters. The reliance on affidavit dated 11.06.2009 Ex.P-5 executed by the appellant is of no avail to him. Admittedly, the said affidavit has been submitted after about ten years of the issuance of the above mentioned letters in the year 1999. The said affidavit was

furnished by the appellant after issuance of notice Ex.A-1 dated 27.05.2009 seeking his eviction from the premises.

Learned counsel for the appellant refers to letter dated 28.02.2000 (Ex.P-9) submitted by the appellant to show that he was ready and willing to deposit the said amount. Perusal of Ex.P-9 reveals that apart from the fact that it was submitted beyond the period of 15 days, the appellant sought information about old rates of the house in question. He expressed his willingness to deposit the amount at the old rates in installments. The appellant cannot take benefit in any manner from the said communications. It is proved on record that the allotment of the said house was not made in favour of the appellant. He is undisputedly in unauthorized possession of the same. Tilak Raj (JE) was not authorized to handover the possession of the said premises.

Perusal of the available record reveals that the appellant was asked to convey his consent for allotment by the authorities at a tentative price of ₹7,62,000/- as a price of the premises. The appellant on one hand chose to dispute the amount in question and not deposit any amount towards the price of the premises and on the other hand is now seeking to challenge the order of eviction. The appellant never conveyed his consent or challenged the said communications of 1999 within fifteen days. It has also come on record that the appellant had earlier been in unauthorized possession of an MIG house. It is further, debatable whether a Civil suit itself would lie in terms of the provisions of the Punjab Regional and Town Planning And Development Act, 1995, though, this point has not been debated or deliberated upon by both the learned Courts below

whether the suit in question would be maintainable against an order of eviction passed by the Competent Authority. The appellant is not entitled to retain possession of the premises in the factual matrix of the case. Learned counsel for the appellant is unable to point out anything on record which points to the misreading of the evidence on record. Needless to say, the appellant is at liberty to pursue the matter for allotment, if at all, pending as is vehemently urged before this Court but the same does not entitle him to retain possession of the premises in any manner.

No other argument has been raised.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgments are well reasoned judgments rendered after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decree dated 04.12.2014 and 01.12.2015 passed by the learned Civil Judge (Jr. Division) Pathankot and learned District Judge, Pathankot, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

21.08.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No