

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4887 of 2018 (O&M)
Date of decision:27.08.2018.

Mahesh Kumar Mahajan

...Appellant

Versus

Anil Mahajan and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Meenakshi Sharma, Advocate for the appellant.

LISA GILL, J.

The appellant/plaintiff is aggrieved of judgment and decree dated 17.11.2016 passed by learned Civil Judge (Senior Division), Pathankot, whereby suit for permanent injunction filed by the plaintiff was dismissed as well as judgment and decree dated 30.03.2018 passed by learned Additional District Judge, Pathankot dismissing his appeal.

Brief facts necessary for adjudication of the matter are that the appellant/plaintiff filed a suit seeking permanent injunction restraining the defendants from dispossessing him from the property in question i.e. a shop under the tenancy of the plaintiff marked as ABCD shown in red colour in the site plan attached. It was pleaded that the plaintiff being a tenant was in possession of the shop in question under the landlordship of the defendants being the landlord. The plaintiff was running the business of repair and sale of spares of heavy motors in the name and style 'M/s M.K. Motors'. The tenancy agreement it was pleaded was reduced in writing in the form of a rent deed which was purportedly in possession of the defendants. It is stated that the plaintiff was regularly paying the rent of Rs.1800/- per month to the defendants but without any receipt. The rent was paid upto August 2014. It

was further pleaded that the defendants were threatening the plaintiff to forcibly dispossess and evict him from the premises in question. Hence, the suit was filed.

Suit was resisted by the defendants who filed a joint written statement with the submissions that the shop in question was under the tenancy of one Gandharv Singh who was running a mechanic shop in the suit property. No rent had ever been paid by the plaintiff to the defendants. The suit it was thus pleaded be dismissed.

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

1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
2. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD
3. Whether there exists no relationship of landlord tenant between the parties? OPD
4. Whether the present suit is frivolous and liable to be dismissed with special costs? OPD
5. Relief.

Despite various opportunities, no evidence was led by the appellant/plaintiff and his evidence was closed by court order. His suit was dismissed by the learned trial Court. Appeal was thereafter filed by the appellant before learned First Appellate Court. During the pendency of his appeal, the plaintiff was evicted from the shop in question on 24.03.2017. In appeal it was pleaded that the appellant was medically unfit as he was suffering from typhoid, he was advised bed rest from 15.11.2016 to 22.11.2016 and it was due to this reason that evidence could not be led by him before the learned trial court. Application was moved by the appellant before learned Additional District Judge, Pathankot that he had been dispossessed under the garb of the judgment and decree which in any case

was required to be set side. An opportunity was afforded to the appellant to prove that he was in settled possession or was dispossessed illegally during the pendency of the appeal regarding which the following issues were framed by the learned Additional District Judge on 19.04.2017: -

- “1) Whether the applicant is entitled to seek restoration of the possession? OPA
- 2) Whether the applicant was tenant in the shop, if so since when? OPA
- 3) Whether the applicant has been dispossessed illegally, if so to what effect? OPR
- 4) Whether the applicant was not in possession exclusively and the shop was being run by Gandarav Singh who is still working in the shop as a mechanic with an arrangement with the onus and is only using the outside of the premises for the purpose of running the mechanic shop while using the shop for keeping his utensils etc., if so to what effect? OPR
- 5) Relief.”

Learned Additional District Judge, Pathankot, vide impugned judgment and decree dated 30.03.2018, dismissed the appeal filed by the appellant while concluding that the appellant had failed to prove his tenancy of the demised premises. Aggrieved there-from, present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned Courts below have wrongly dismissed the suit filed by the plaintiff/appellant. The rent deed between the landlord and tenant was in possession of the defendants, therefore, the appellant could not prove it.

It is further contended that defendant-Anil Kumar (RW1) in his cross-examination admitted that vide order dated 07.09.2017, the defendant had been restrained from dispossessing the appellant. Learned counsel vehemently argues that in this view of the matter it is clearly proved that the appellant was forcibly dispossessed from the premises in question. Evidence could not be led by the appellant before the learned trial Court due to illness. It is thus prayed that this appeal be allowed, the impugned judgments and decrees dated 17.11.2016 and 30.03.2018 be set aside, consequently decreeing the suit filed by the appellant.

I have heard learned counsel for the appellant and have perused the file.

It is undisputed that issues in this case were framed by the learned trial court on 24.09.2015 thereafter, as many as six effective opportunities were afforded to appellant-plaintiff to lead his evidence. However, no evidence was led by the appellant-plaintiff, despite opportunities and evidence was closed by order. Specific argument raised on behalf of the appellant is that he suffered typhoid and was advised bed rest, therefore, he could not pursue the matter and evidence could not be led. At the first instance, it is to be noted that there is no such medical evidence on record to reflect that the appellant-plaintiff was incapacitated on account of ill-health for all this while. Even as per the appellant's case, he was advised bed-rest from 15.11.2016 to 22.11.2016. Inaction on the part of the appellant is clearly unexplained. The argument raised in this respect is clearly not borne out from the record.

Argument raised by learned counsel for the appellant that RW1 Anil Kumar admitted the passing of order dated 07.09.2017 under Order 39 Rules 1 and 2 CPC restraining the defendants from forcible dispossessing

the appellant is of no avail to him. The said order per-se, in the absence of any other evidence on record, does not conclusively prove the possession of the appellant over the demised premises in the capacity of a tenant.

The appellant in his affidavit (Ex.AW1/A) claimed that he was a lawful occupant of the premises in question as a tenant. In a pre-planned conspiracy, locks put by the appellant were removed by the respondents on 24.03.2017 in his absence. However, learned counsel for the appellant is unable to deny that the appellant in his cross-examination was unable to reveal the date and month of the rent deed. Even a photocopy of the rent deed was not produced on record. The appellant specifically stated that he did not file any application for deposit of the rent or ever offer to pay rent from the date of filing of the suit till 17.11.2016. It is further admitted that though the shop in dispute falls within the municipal corporation, house tax was never deposited by him. Evidence of Narinder Singh and Baljit Singh led before the learned first appellate court is also of no avail to the appellant. Baljit Singh has clearly admitted that no threat whatsoever was ever meted out to the appellant in his presence. Anil Kumar (RW1), who was a dealer of John Deere Tractor from 2006 to 2008, categorically stated that the shop in question was never rented out to the appellant. The same was in possession of Gandharav Singh who was working as a mechanic. Earlier, the agency was in favour of John Deere Tractor and was vacated in favour of the respondent. He further stated that the shop was rented out to Gandharav Singh in 2010, who left the premises. Thereafter, the possession was with the owners.

The respondents proved on record that the appellant was in possession of the shop under the land-lordship of Amir Chand regarding the period in dispute. Judgments and decrees in suit for recovery of Rs.34,000/-

for use and occupation of the premises from 18.09.2010 to 17.07.2013 are on record. Bill-book to reflect the continuous work going on under the R.M. Motors John Deere by the landlords was placed on record. It is further proved on record that the appellant was in possession of other shops during the period in question. No explanation in this regard has come forth.

The learned Additional District Judge, Pathankot rightly held that there is no evidence on record to prove that the appellant was in possession of the premises in question as a tenant. No details inasmuch as no date or month or year on which he came in possession of the premises in question is also forthcoming. There is no evidence to show that the appellant was ever in settled possession of the premises or dispossessed on the date as alleged.

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 judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 17.11.2016 and 30.03.2018 passed by the learned Civil Judge (Sr. Division), Pathankot and learned Additional District Judge, Pathankot, respectively, which warrant any interference by this Court.

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

(LISA GILL)
JUDGE

August 27, 2018
Ishwar

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