

RSA No.6189 of 2017 (O&M)

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

RSA No.6189 of 2017 (O&M)

Date of decision: 09.01.2018

Avtar Singh

.....Appellant

versus

Mohan Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Sarju Puri, Advocate, for the appellant.

RAMENDRA JAIN, J. (ORAL)

Defendant has preferred this Regular Second Appeal assailing the judgment and decree dated 05.10.2015 of the trial Court, Shaheed Bhagat Singh Nagar, and judgment and decree dated 30.10.2017 of the First Appellate Court, Shaheed Bhagat Singh Nagar, affirming the aforesaid judgment of the trial Court.

Put pithily, suit of the respondent-plaintiff for mandatory injunction directing the appellant-defendant to hand over the vacant possession of the demised shop constructed over rectangle No.67 Killa No.23/5 situated in the revenue estate of Garshankar Road, Banga, and for recovery of ₹ 1,33,000/- towards arrears of compensation at the rate of ₹ 1,000/- per month along with interest @ 9% per annum from the date of filing the suit till actual realization of the same, was decreed vide judgment and decree dated 05.10.2015 by the trial Court.

Being aggrieved, appellant approached the First Appellate Court, but remained unsuccessful as his appeal too was dismissed vide judgment and decree dated 30.10.2017.

Learned counsel for the appellant contends that license deed

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was exhibited by way of secondary evidence, but the necessary ingredients to lead the same as envisaged under Section 65 of the Evidence Act were not proved i.e. the date of loss of original license deed etc. Therefore, both the Courts below have erred in relying upon the license deed though exhibited, but not legally proved. The relationship between the appellant and the respondent was of tenant and landlord, which fact is clearly evident from the admissions of witnesses of the respondent-plaintiff inasmuch as they time and again admitted in their statements about the tenancy of the appellant over the demised shop. Both the Courts below failed to appreciate that the instant suit of the respondent-plaintiff was barred under Order 23 Rule 1 CPC, because the respondent-plaintiff had earlier withdrawn his suit on 05.03.2004 without reserving any right to file fresh one on the same cause of action. Both the Courts below have failed to appreciate that recovery of arrears of license fee beyond three years was barred by limitation. In support of his arguments, learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in **Pradeep Oil Corporation v. Municipal Corporation of Delhi and another**, 2011(4) R.C.R.(Civil) 313, judgments of this Court in **Sukhwinder Singh and others v. Harbans Singh and another**, 2015(8) R.C.R.(Civil) 678, **Kusum Rani v. Bala and others**, 2010(51) R.C.R.(Civil) 156, **Anupam Jain v. Kulwant Gupta**, 2016(3) R.C.R.(Civil) 220 and the judgment of Andhra Pradesh High Court in **Bijivemula Venkata Subba Reddy v. Jangam Satya Babu**, 2010(6) R.C.R.(Civil) 364.

I have given anxious consideration to the submissions made by learned counsel for the appellant.

The earlier suit filed by the respondent-plaintiff on 24.03.1998 was dismissed as withdrawn on 05.03.2004, whereas present suit was filed

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by him on 05.08.2009 i.e. after around five years on a different cause of action after serving fresh legal notice on dated 29.04.2009 on the appellant under Section 106 of the Transfer of Property Act (in short the 'T.P. Act'). In his subsequent fresh suit, the respondent-plaintiff had taken the plea that appellant-defendant had not paid even a single penny towards license fee/compensation from the date of inception of the license which stood terminated by issuance of a fresh legal notice under Section 106 of the T.P. Act.

Since the license deed in both the suits was the same, therefore, it cannot be said that no fresh cause of action could have ever accrued to the respondent-plaintiff after withdrawal of the initial suit more than five years ago inasmuch as the cause of action was a recurring one. In the instant case, in default of payment of monthly license fee, fresh cause of action had accrued in favour of the respondent-plaintiff every month. Therefore, it does not lie in the mouth of the appellant-defendant that the subsequent suit of the respondent-plaintiff was barred under Order 23 Rule 1 CPC.

As far as the argument of the learned counsel for the appellant with regard to non-proving of the ingredients of Section 65 of the Evidence Act for leading secondary evidence are concerned, the same has no legs to stand inasmuch as from the statement of PW1 Gurcharan Singh general attorney of the respondent-plaintiff it is evident on record that original license deed had lost and thus the knowledge of the place of its loss was immaterial. PW1 Gurcharan Singh has categorically stated that he does not know by whom the original license deed was lost either it may be from Ajmer Singh or from him. Thus, the date of loss of original license deed had become immaterial rather related to the insignificant aspects of the case.

More-so, it is well settled that the statement of a witness has to

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be read as a whole and not in isolation. In the instant case, if the statement of PW1 Gurcharan Singh, general attorney of the respondent-plaintiff, is read as a whole, the only irresistible conclusion which can be drawn is that appellant-defendant was a licensee and not the tenant of respondent-plaintiff as soon as this witness denied the suggestion that appellant-defendant was a tenant in the demised shop. Moreover, the fact cannot be lost sight of that the witnesses residing in rural areas are rustic villagers. They do not understand the intricacies of law. While cross-examination of the witnesses of the respondent-plaintiff, the appellant-defendant through his counsel tried to put the words in their mouths about his tenancy, but could not succeed as soon as they denied the relationship of tenant and landlord between the appellant-defendant and respondent-plaintiff.

Facts and circumstances of the judgments, referred to above, and relied upon by learned counsel for the appellant are not identical to the facts of the present case, therefore, no benefit of the same can be given to the petitioner.

There are concurrent findings against the appellant of both the Courts below. I have gone through the impugned judgments of both the Courts below and find no illegality or perversity in the same. Rather they are well-reasoned. More-so, no question of law muchless substantial question of law has been raised or arises for consideration in this appeal.

Resultantly, this appeal being devoid of any merit, is hereby dismissed.

(Ramendra Jain)
Judge

January 09, 2018
R.S.