

In the High Court for the States of Punjab and Haryana at Chandigarh

RSA No. 2582 of 1988 (O&M)
Date of Decision: April 09, 2019

Chhatar Singh

... Appellant

Versus

Kundan Lal and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Arnav Sood, Advocate
for the appellant.

Mr. Alok Mittal and Mr. Rohit Nagpal, Advocates,
for respondent No.1.

Amit Rawal, J. (Oral)

Present regular second appeal is directed against the judgment and decree of the Lower Appellate Court at the instance of appellant-defendant whereby the suit of the respondent-plaintiff seeking mandatory injunction for handing over the vacant possession of shop allegedly given by him on licence to his son Deen Dayal defendant no.1, who had joined Chatter Singh as defendant no.2 in his business as a partner on 17.01.1983 has been decreed. The licence was alleged to be terminated on 23.10.1983. Defendant no.2 did not hand over the possession.

Defendant no.1 admitted the claim of the plaintiff, whereas defendant no.2 resisted the suit and denied plaintiff to be owner of the shop. He alleged that defendant no.1 was the owner of the shop and he himself was tenant under defendant no.1 . He had entered into a partnership in a

business of scooter repairs with defendant no.1 on 17.01.1983. Defendant no.1 had retired from the partnership business and thereafter, defendant no.2 was allowed to continue the business as proprietor.

The trial Court, on the pleadings of the parties, framed the following issues:-

- “1. Whether the plaintiff is the owner of the suit property detailed in para no.1 of the plaint? OPP*
- 2. Whether the plaintiff gave the shop in dispute to the defendant no.1 on licence and whether it was terminated by him, as alleged in para no.2 & 3 of the plaint? If so, to what effect? OPP*
- 3. Whether the plaintiff is entitled to recover mesne profits/compensation for the use and occupation of shop in dispute from the defendants as alleged in para no.8 of the plaint? If so, at what rate and for what period? OPP*
- 4. Whether the defendant no.1 had jointed the defendant No.2 in a partnership business without consent of the plaintiff and had started business of cycle repairs as alleged in para no.3 of the plaint? OPP*
- 5. Whether the plaintiff has no locus standi to file the present suit as alleged in preliminary objection? OPD*
- 6. Whether the suit is not maintainable in the present form as alleged in preliminary objection? OPD*
- 7. Whether the suit is collusive between the plaintiff and defendant no.1 as alleged? OPD*
- 8. Whether the plaintiff is estopped from filing the present suit by his act, conduct & acquiescence, as alleged? OPD*
- 9. Whether the suit is liable to be stayed under Section 10 CPC as alleged in preliminary objection? OPD*
- 10. Whether the suit is bad for mis-joinder of necessary party as alleged in preliminary objection?*

OPD

11. Whether the suit is not properly valued for the purpose of court fee and jurisdiction, as alleged in preliminary objection? OPD

12. Whether the suit property is joint Hindu family coparcenary property, as alleged in the additional plea?

If so to what effect? OPD

13. Relief.”

In support of his case, respondent-plaintiff examined three witnesses and placed on record Ex.P1 and Ex.P2, House Tax Assessment Register to establish as a document of title and one Ex.DY, the photocopy of the agreement by virtue of Defendant no.1 and 2 carried on the business of scooter.

The trial Court by discarding the aforementioned documents as they were not of title, dismissed the suit but the Lower Appellate Court by relying upon the statement of appellant-defendant no.2 being a tenant and the status of ownership of Kundan Lal, decreed the suit.

Mr. Arun Jain, learned Senior counsel assisted by Mr. Arnav Sood, learned counsel, appearing on behalf of the appellant, submitted that in a suit for mandatory injunction, it is *sine qua non*, for plaintiff to establish himself as a owner as relationship of licensee and licensor is a trustee which licensee hold on behalf of the licensor. Ex.P1 and P2 are the only documents i.e. House Tax Assessment Register whereby plaintiff claims himself to be the owner. The trial Court, in such circumstances, dismissed the suit, but the Lower Appellate Court heavily relied upon the statement of Chhatar Singh – defendant no.2, to be tenant of Deen Dayal -defendant no.1, later on joined with his father, decreed the suit.

Learned counsel, appearing on behalf of the respondent,

submitted that the judgment and decree of the Lower Appellate Court, being the last Court of fact and law, actually appreciated the evidence and decreed the suit. There is no illegality or perversity. Withholding of the rent receipt of Chhatar Singh – defendant no.2 would confer ownership, suit for mandatory injunction, in such circumstances, was maintainable and rightly decreed. Mark DY – agreement reflects the possession of the shop with Chatter Singh i.e. appellant-defendant no.2.

I have heard learned counsel for the parties, appraised the paper-book, records of the Courts below and of the view that following Substantial Questions of Law arise for determination:-

1. Whether the respondent-plaintiff have been able to prove the ownership in order to succeed in a suit for mandatory injunction seeking possession from defendant no.2 as a licensee?

The answer to the afore-mentioned question is 'No'. Except Ex.P1 and P2 – House Tax Assessment Register, no other documentary evidence has been placed on record. In other words, the plaintiff has miserably failed to establish the ownership of the suit property. The breach of obligation as per the provisions of Section 39 of the Specific Relief Act gives cause of action to the licensor, if licence is revoked immediately and approaches the Court later, remedy is suit for possession. . Be that as it may, the Lower Appellate Court was enjoined upon an obligation to refer all the documents and cannot go in arena of surmises and conjectures. Withholding of receipt as a tenant cannot be a ground to order for ejectment as the entire focus of the Courts below should have whether the plaintiff has been able to discharge the onus as a licensor being the owner of the shop. In the absence

of any locus the suit was liable to be dismissed. Keeping in such circumstances, the Lower Appellate Court has miserably failed to notice the aforementioned basic ingredients while entertaining the appeal on behalf of the respondent-plaintiff, much less perverse.

For the reasons afore-mentioned, the substantial questions of law are answered in favour of the appellant-defendant no.2 and against the respondent-plaintiff. Judgment and decree of the Lower Appellate Court is set aside and that of the trial Court is restored.

Accordingly, appeal stands allowed.

April 09, 2019
vkd

(Amit Rawal)
Judge

Whether speaking / reasoned : Yes

Whether reportable : No