

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

**RSA No.2492 of 2019 (O&M)
Date of Decision:20.05.2019**

Amritpal Singh

.....Appellant

Versus

Davinder Kaur and others

..... Respondents

AND

RSA No.2558 of 2019 (O&M)

Amritpal Singh

.....Appellant

Versus

Davinder Kaur and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.BPS Virk, Advocate
for the appellant.

LISA GILL, J.

R.S.A Nos. 2492 and 2558 of 2019, are taken up for hearing and are being disposed of together as both these appeals arise out of judgments and decrees dated 19.07.2016, passed by the learned Additional Civil Judge (Sr. Division), Samana, as well as judgement and decree dated 27.11.2018, passed by the learned Additional District Judge, Patiala.

Brief facts as pleaded by the plaintiff-Davinder Kaur are that her husband, namely Satnam Singh, purchased the house in question as detailed in the plaint from its earlier owner and occupant-Darshan Singh, through a registered sale deed dated 11.02.2002. Plaintiff's husband, it is

stated died on 14.4.2011. Thereafter, mutation of the said house was entered and sanctioned in favour of plaintiff-Davinder Kaur, who accordingly became the owner of the said house. It is further pleaded that the defendant-Amritpal Singh had approached the plaintiff's husband on 16.07.2010 alongwith Jharmal Singh son of Kashmir Singh and the house in question had been given on an oral license to Amritpal Singh by the plaintiff's husband for a period of six months. As Satnam Singh failed to vacate the said house in six months, the license was revoked by Satnam Singh on 30.01.2011 and he asked the defendant to vacate the house. In the meanwhile, Satnam Singh passed away. Plaintiff requested the defendant to vacate the said house, on which the defendant requested for some time to make alternate arrangements. In this regard, a writing dated 30.06.2011 was executed by the defendant, whereby he assured to vacate the house in question by the end of December 2011. The defendant did not honour the settlement and the house was not vacated. Despite, repeated requests, vacant possession of the house was not handed over to the plaintiff. Plaintiff also claimed use and occupation charges of the house in question, at the rate of ₹3000/- per month w.e.f., 30.01.2011 to 30.01.2012. Hence the suit was filed.

Defendant-Amritpal Singh contested the suit while taking various preliminary objections and denied the averments on merits. It is stated that defendant entered possession of the suit property on the basis of an oral tenancy in July 2010 at the rate of ₹8,000/- per month under Satnam Singh. Electricity connection is in the name of Darshan Singh. It is stated that Satnam Singh during his life time expressed his willingness to sell his

house to the defendant and resultantly an agreement to sell in favour of Tejinderpal Singh, son of the defendant was executed for a total sale consideration of ₹14,50,000/-. A sum of ₹1,50,000/- was received by Satnam Singh as earnest money and agreement to sell was executed in the presence of Bobby Sharma and Lakhwinder Singh. It was agreed that the sale deed would be executed in December 2010, but as Satnam Singh remained under treatment, the date for execution of the sale deed was extended to 07.01.2011. Original agreement to sell, it is claimed was with the mediator- Bobby Sharma, but he had not returned the said document. In the meantime, Satnam Singh passed away. Plaintiff agreed to execute the sale deed, but thereafter backed out and even threatened to take forcible possession of the property in question. Dismissal of the suit was prayed for.

Replication was filed by the plaintiff. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to the relief of possession as prayed for?OPP
2. Whether the plaintiff is entitled to the relief of recovery as prayed for?OPP
3. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?OPP
4. Whether the suit of the plaintiff is not maintainable in the present form?OPD
5. Whether the suit is bad for non-joinder of the necessary parties?OPD
6. Whether the plaintiff has no cause of action to file the present suit?OPD
7. Whether the suit of the plaintiff is barred under the principal of the resjudicata read with Order 2 Rule 2 CPC?OPD
8. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances,

as well as the evidence on record decreed the suit filed by the plaintiff-respondent. Plaintiff was held entitled to the relief of possession and permanent injunction, but not *mesne* profits. It is observed by the learned trial Court that the agreement to sell upon which reliance is placed by the defendant (present appellant) did not even see the light of the day, much less being proved on record. Moreover, the defendant failed to prove his tenancy of the demised premises. Signatures of the defendant on the writing dated 30.06.2011, Ex.PW1/3 (compromise), is admitted. Furthermore, handing over of ₹1,50,000/- as earnest money does not even find mention in the pleadings of the defendant. Learned trial Court concluded that the relationship which existed between the parties was neither of a licensee and licensor or of a tenant and landlord and in-fact it is a case of trespassing by the defendant on the property of the plaintiff. It is to be noted, at this stage, that the learned trial Court directed that the judgement shall be operative only when the plaintiff affixes the ad-valorem court fee as per the market value of the suit property within one month from the date of pronouncement. Defendant-appellant was held to be in illegal and unauthorized possession of the house of the plaintiff.

Appeal was preferred by the present appellant. Cross-objections were filed by the respondent-plaintiff being aggrieved of denial of mesne profits. Learned Additional District Judge, Patala, vide impugned judgment and decree dated 27.11.2018, dismissed the appeal filed by the appellant-defendant and allowed the cross-objections filed by the plaintiff-respondent. The plaintiff was held entitled to use and occupation charges at the rate of ₹3000/- per month from 30.01.2011 to 30.01.2012 and for further use and

occupation charges at the rate of ₹3000/- per month till the delivery of the actual possession of the house in question.

Aggrieved therefrom, present appeals have been filed by the appellant-defendant.

Learned counsel for the appellant vehemently argues that both the learned Courts below have grossly erred in decreeing the suit filed by the plaintiffs-respondents. It is submitted that the present appellant was inducted as a tenant in the demised premises. Moreover, once learned trial Court specifically concluded that the plaintiffs had failed to prove the appellant to be a licensee, the suit could not be decreed in any manner. In such a situation, the plaint should have been returned to the plaintiffs with liberty to amend the same and thereafter, the matter should have been decided afresh after framing of a specific issue regarding the appellant being a tress-passer or otherwise. Proper court fee would then be affixed. He relied upon the judgement of the Hon'ble Supreme Court in **Bishwanath Agarwalla Vs. Sabitri Bera and others 2009(4) R.C.R (Civil) 1.**

It is further submitted that the present suit for possession without a declaration in respect to the title, is not maintainable. He relied upon the decision in **Santosh Kumar Das and others, 2014 (89) R.C.R (Civil) 13.**

It is further submitted that the grant of *mesne* profits over and above the amount of ₹86,000/- is in any case not justified for the reason that the requisite Court fee has not been affixed. It is thus prayed that present appeal be allowed and the suit filed by the plaintiff-respondent be dismissed.

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

It is borne out from the evidence on record that Satnam Singh was the owner of the demised property. Plaintiff-respondent, his widow stepped into the shoes of her husband. Possession of the appellant-defendant over the house in question is admitted. The plaintiff has set up a case of the defendant being a licensee with the defendant asserting that he was a tenant under the plaintiff's husband. The defendant, nevertheless is proved to be in unauthorized possession of the property i.e., a residential house in question. It is relevant to note that the present appellant has set up an agreement to sell purportedly executed by Satnam Singh, the plaintiff's husband in favour of Tejinderpal Singh, his son. Entire sequence of events as it unfolds from the pleadings, points to various methods employed by the present appellant to retain possession of the premises in question. It is not disputed that the appellant had entered into a compromise with the plaintiff and he had undertaken to handover vacant possession of the premises by December 2011. A writing in this respect was executed by Amritpal Singh on 30.06.2011, Ex.PW1/3. PW-1-Amritpal Singh, has admitted and identified his signatures on the said writing dated 30.06.2011. In the Civil Suit, Ex.PW1/4, titled as "Tejinderpal Singh Vs. Davinder Kaur", Tejinderpal Singh has also admitted the signatures of his father-Amritpal Singh on writing dated 30.06.2011, whereby it is agreed that vacant, peaceful possession of the residential house would be handed over to the plaintiff in December 2011. Tejinderpal Singh, who has testified as DW-3, in the present proceedings yet again admitted the signatures of his father on the said writing dated 30.06.2011.

Defendant's stand regarding execution of the agreement to sell

is not substantiated in any manner by the evidence on record. Admittedly, agreement to sell was never produced by the appellant, though, it is stated that the original agreement to sell was in possession of Bobby Sharma.

Learned counsel for the appellant is unable to deny that the said Bobby Sharma or Lakhwinder Singh, allegedly the attesting witnesses of the purported agreement to sell, have not been examined. Moreover, there is no pleading of the defendant to the effect that a sum of ₹1,50,000/- was given to the plaintiff and another sum of ₹50,000/- to the middlemen Bobby Sharma and Lakhwinder Singh. DW-2-Paramjit Singh, who was examined to prove the handing over of the consideration amount is not relevant for the simple reason that Paramjit Singh-DW-2, is not even mentioned as an attesting witness in the defence put up by the defendant. The stand taken in the pleadings is that the agreement to sell was executed between the present appellant and Satnam Singh in the presence of Bobby Sharma and Lakhwinder Singh. Thus, introduction of DW-2-Paramjit Singh, is a clear afterthought. The present appellant set up a case that he was a tenant in the premises under the husband of the plaintiff, but it is a matter of record that the said defendant could not prove payment of rent as alleged by him.

Lack of *bona fides* on the part of the appellant are also apparent from the fact that at one point of time, he extended an assurance to vacate the premises in question by December 2011, which was reduced into writing on 30.06.2011. Defendant has admitted execution of the said writing. There is no explanation whatsoever as to why this assurance/undertaking was not honoured. In my considered opinion, no ground is made out for affording any indulgence to the appellant.

Learned trial Court has specifically observed that the decree shall become operative only on deposit of the requisite court fee. Therefore, argument raised by learned counsel for the appellant regarding maintainability of the suit, is devoid of any merit. Cases relied upon by learned counsel for the appellants are not applicable in the facts and circumstances of this case.

Learned counsel for the appellant-defendant 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 learned Courts below returned concurrent findings vide impugned judgements, after proper appreciation and consideration of the evidence on record, which calls for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 19.07.2016 and 27.11.2018 passed by the learned Additional Civil Judge (Sr. Division) Samana and learned Additional District Judge, Patiala, respectively, are upheld.

Present appeals are, consequently, dismissed with no order as to cost.

20.05.2019
s.khan

[LISA GILL]
Judge

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