

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4415 of 2019 (O&M)
Date of decision: 25.09.2019

Surinder Pal

...Appellant

V/s.

Sudesh Kumari and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. M.K.Singla, Advocate for the appellant.

RITU BAHRI, J. (Oral).

The appellant/defendant has come up in regular second appeal against the judgment of the trial Court dated 23.04.2015 and that of lower appellate Court dated 30.05.2019 whereby the suit filed by the plaintiffs for mandatory injunction directing the defendant to vacate the shop, has been decreed.

The case set up by the plaintiffs was that plaintiff No. 1-wife of Tarsem Lal had purchased the shop from original owner Krishna Devi vide sale deed dated 03.02.1981. Darshan Lal was also co-owner alongwith plaintiff No. 1 and he sold his half share to plaintiff No. 2 Atul Sharma through sale deed dated 13.11.2009. The above two sale deeds have not been disputed by the defendant. The defendant being relative of the plaintiffs, took the shop in question from the plaintiffs as licensee. Thereafter the license of the defendant was revoked by the plaintiffs orally and subsequently the plaintiffs also got served a legal notice upon the defendant through his counsel Sh. Tejwant Singh, Advocate vide which the

license of the defendant was terminated on 29.07.2011 and hence the suit was filed. The defendant, after notice, filed a written statement taking the plea that he is a tenant of the shop in question at a monthly rent of Rs.300/- per month from the year 1986 and since then the defendant is in possession of the said shop and is doing practice as Unani Vaid. He has made a payment of the agreed rent upto July 2011 but the plaintiffs refused to accept the rent and a money order was sent to the plaintiffs by defendant regarding the payment of rent of August 2011 on 26.08.2011 but the plaintiffs have refused to accept the money order.

From the pleadings of the parties, following issues were framed vide order dated 26.11.2012:-

- 1. *“Whether the plaintiffs are entitled for mandatory injunction as prayed for? OPP***
- 2. *Whether plaintiffs are entitled for permanent injunction as prayed for?OPP***
- 3. *Whether the plaintiffs have not come to the Court with clean hands? OPD***
- 4. *Whether suit is not maintainable?OPD.***
- 5. *Whether plaintiffs have no cause of action to file the present suit?OPD***
- 6. *Relief.”***

After leading evidence by both the parties, the suit of the plaintiffs has been decreed by returning a concurrent finding of fact that defence taken by the defendant in the written statement was that he was a tenant in shop. However no document was led to prove the relationship of landlord and tenant. No witness was examined by the defendant to prove that he was a tenant of the plaintiffs and no rent receipt was produced by him. Another fact which has been taken into account is that notice dated 29.07.2011 (Ex.P3) vide which the license of the defendant was terminated

and revoked and that notice was served upon the defendant through courier service, the receipt of the same was proved on record as Ex.P4 and Ex.P5 respectively. When the defendant came to know about the termination of license then he sent a money order on 26.08.2011 to create a false ground of tenancy and in this backdrop, a finding has been given by both the Courts that there was no relationship of landlord-tenant between the plaintiffs and defendant. The plaintiffs as per the above said sale deed had a right to revoke the licence and the suit has been decreed in view of the above said finding.

Learned counsel for the appellant has argued that suit for mandatory injunction for possession was not maintainable. However this argument has been considered by both the Courts and held that as per Section 39 of the Specific Relief Act, suit for mandatory injunction is maintainable to prevent the breach of an obligation. A reference has been made to a judgement passed by this Court in ***Subhash Chandra Vs. Navneet Lal and others*** 1987(1) All India Land Law Reporter Page-556 (P&H), wherein it has been held that where a license has been revoked of a licensee then suit for mandatory injunction is legally maintainable in the eyes of law.

Since the plea taken by the defendant that he was a tenant, he was required to lead evidence or examine witness to prove that there was oral/written tenancy between the parties. The plaintiffs were not required to lead any evidence that they had given shop to the defendant as licensee. Revocation of the license vide notice dated 29.07.2011 (Ex.P3) was sufficient to file a suit for mandatory injunction and possession.

After going through the judgments passed by the both Courts below, finding of fact has been correctly recorded and no interference is required in the above said finding of fact.

Appeal is dismissed accordingly.

Pending application also stands dismissed.

(RITU BAHRI)
JUDGE

25.09.2019
Divyanshi

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