

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-986-2013 (O&M)

Date of decision: 19.07.2019

Dalip Singh

...Appellant

Versus

Manjit Kaur @ Guddi

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Mr. A.K. Kaushal, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. This regular second appeal has been preferred against the judgment and decrees dated 05.05.2012 and 07.11.2012, passed by Civil Judge (Sr. Divn.), Shaheed Bhagat Singh Nagar and Addl. District Judge, Shaheed Bhagat Singh Nagar, by which the suit filed by plaintiff-appellant herein has been dismissed.

2. Brief facts of the case are, that the plaintiff/ appellant herein filed a suit for mandatory injunction against the defendant/respondent herein alleging that he is owner of the premises as shown in red and blue colour in the site plan and described in the head note of the plaint, situated in the abadi of Mohalla Michgran, Rahon, Tehsil and District Nawanshahr. The defendant was out of shelter and on request of the defendant, the

plaintiff provided the premises in question as a gratuitous licensee without any charge for a short time, and occupation and the legal possession was to remain with the plaintiff. The defendant is guilty of committing acts of waste and the plaintiff does not wish to keep the defendant as licensee and the licence stands terminated. The defendant has no right to use and occupy the premises in question. Therefore, he has filed the suit for mandatory injunction.

3. On notice, defendant/respondent herein appeared through counsel and filed written statement by taking preliminary objections regarding locus standi, cause of action, maintainability, estoppel, court fee, limitation, mis-joinder and non-joinder of necessary parties etc. On merits, the defendant took the plea that the plaintiff is not the owner of the suit property. The defendant has been residing in the suit property for the last so many years. She has been using the house for residential purposes. The plaintiff has no right, title or concern with the property in dispute. The site plan produced by plaintiff is wrong and against the situation of the spot. She has raised whole construction in the suit property by spending money from her pocket. Rest of the averments of the plaint have been categorically denied and dismissal of the suit was prayed for.

4. In his replication, the plaintiff controverted the preliminary objections raised by the defendant in her written statement, while denying the other contents of the written statement, the plaintiff reiterated the correctness of the contents of his plaint. From the pleadings of the parties, following issues were framed by the trial Court :-

“1. *Whether the plaintiff is entitled for mandatory*

injunction as prayed for? OPP

2. *Whether the defendant has ceased to use and occupy the premises in question? OPD*
3. *Whether the plaintiff has no locus standi to file the present suit? OPD*
4. *Whether the suit is not maintainable in the present form? OPD*
5. *Whether the plaintiff is estopped from filing the suit by act and conduct? OPD*
6. *Whether the suit of the plaintiff is not within the limitation? OPD*
7. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD*
8. *Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD*
9. *Relief.”*

5. The plaintiff Dalip Singh in order to prove his case himself stepped into the witness box as PW-1 and examined Surjit Kumar as PW-2. After tendering certain documents plaintiff-appellant closed his evidence. On the other hand, the defendant examined Sukhdev Singh, her attorney, as DW-1, and examined Kishan Kaur as DW-2. Thereafter the defendant closed her evidence. No rebuttal evidence was led.

6. The trial Court, on appreciation of the evidence, dismissed the suit holding that the plaintiff/appellant has not proved to be owner of the suit property. The appeal preferred by the appellant herein too has been dismissed by the lower Appellate Court while upholding the judgment and decree passed by the trial Court. During the pendency of the appeal an application was also filed by appellant –plaintiff under Order 41 Rule 27

read with Section 151 C.P.C. for additional evidence seeking permission to produce copy of site plan passed by the Municipal Committee giving him permission to construct. However, the said application was also dismissed by the Addl. District Judge on the same day on the ground that he had knowledge of this plan and did not produce it at the relevant time. Aggrieved against the said judgments and decrees, the instant second appeal has been filed.

7. Mr. Sarju Puri learned counsel appearing on behalf of the appellant submits that the courts erred in dismissing his suit without taking into consideration that he is the owner of the suit property and that the defendant had been allowed to reside in the premises as a licensee. The appellant had stepped into the witness box in support of his claim while the respondent did not step into witness box to face cross-examination and was represented through her attorney who would not be competent to depose on personal knowledge of the principal. It was further argued that the dismissal of the application for additional evidence had caused great prejudice to the appellant. The appellant had been given permission to construct and coupled with the payment of house tax, it would be established that he is the true owner of the property.

8. Per contra, Mr. A.K. Kaushal, learned counsel for the respondent urges that the courts below have returned a positive finding that there is no evidence to prove that the appellant is not owner of the suit property and the first Appellate Court has rightly dismissed the application for additional evidence on the ground that the same ought to have been put in evidence at the relevant time. It is contended that the provisions of order

41 Rule 27 CPC do not contemplate evidence being led at a belated stage while contending that the application cannot be allowed to remove a lacuna in the evidence. It is argued that the appellant has to establish that notwithstanding the exercise of due diligence such evidence was not within his knowledge, or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, which he has not been able to do.

9. I have heard the counsel for the parties and have also perused the pleadings of the case.

10. The claim of the appellant has been dismissed on the ground that he has not been able to prove his case. The appellant had relied upon Ex. P-4 which is a copy of the assessment register for the year 2005-2006 to establish his ownership which evidence had been discarded on the ground that the document did not establish ownership and was prepared for fiscal purposes.

11. Without going into the merits of the appeal on all issues, the first question that needs to be addressed is whether there is any illegality in the order dated 07.11.2012 of the Appellate Court dismissing the application filed under Order 41 Rule 27 C.P.C.?

12. The appellant herein filed a suit for mandatory injunction on the ground that he was owner of the suit property as shown in red and blue colour in the site plan attached and described in the head note of the plaint. The defendant had been allowed to reside in the said premises for a short period of time as the gratuitous licensee. However, the said license had been revoked and the defendant was asked to vacate the said premises. The

suit for mandatory injunction was dismissed primarily on the ground that the appellant herein had not been able to prove that he was the true owner of the premises in dispute. The appellant had relied upon the assessment register of the Municipal Corporation for the year 2005-2006 wherein his name had been reflected as an owner. However, the said evidence was discarded by the Courts below. In appeal before the Appellate Authority an application had been preferred under Order 41 Rule 27 CPC seeking permission to place on record a plan sanctioned by the Municipal Corporation on 31.05.1982 allowing him to construct and to place on record two statements of Dharam Pal and Bheeru Ram who had suffered a statement dated 26.10.2005 before A.C. 1st Grade, Nawanshahar when there was a dispute between Joginder Singh, brother of the appellant and Manjit Kaur. It was also contended that the property in dispute is situated in Lal Lakeer of village Rahon and the site plan sanctioned by Municipal Committee, Rahon was an important piece of evidence. It was contended that the appellant was 75 years old and was not able to trace the said documents at the relevant time. It is argued that Municipal Corporation had given him permission being the owner of the said property, and, therefore, the evidence would be a clincher to his claim.

13. The Appellate Court has the power to allow additional evidence under order 41 Rule 27 CPC which reads as “(b) *the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined*”. Meaning thereby the Court may allow additional

evidence not only if it requires such evidence *"to enable it to pronounce judgment"*, but also for *"any other substantial cause"*. The view expressed by the Hon'ble Supreme Court in ***K. Venkataramiah v. A. Veetharama Reddy and others, 1963 AIR (SC) 1526*** has been consistently followed by the Courts.

14. In the present case, an application under Order 41 Rule 27 C.P.C. was filed during the pendency of the appeal before the Appellate Court seeking permission to lead additional evidence in support of his claim that he is the owner of the suit property. In the opinion of the Court, this document as sought to be placed on the record is an important piece of evidence which would go to the very root of the case. The appellant should have been given an opportunity to exhibit the same, instead of dismissing the application on the ground of delay in producing the same. The appellant had given sufficient explanation as to why he could not place the document on the record and the age of the appellant would also be of consideration as to why he could not trace the documents. With the relevant documents on the record, the Court would have been able to do substantial justice between the parties and pronounce judgment accordingly.

15. Consequently, the appeal is allowed and the judgment and decree as passed by the First Appellate Court is set aside as also the orders passed on the application filed under Order 41 Rule 27 C.P.C.

16. In view of aforesaid, this court deems it appropriate to remand this case back to the Court of District Judge, Shaheed Bhagat Singh Nagar, who in turn would pass appropriate orders with regard to two options available to the Appellate Court in the context of remand on the basis of

additional evidence i.e. either to record evidence itself or to summon report from the trial Court on the issue. This would also be in consonance with the judgment as rendered by Hon'ble the Supreme Court in ***H.P. Vedavyasachar v. Shivashankara, (2009) 8 S.C.C. 231*** wherein it has been held that once an application has been filed for leading additional evidence, the Appellate Court has two options before it - one to lead evidence itself and the other to direct the trial court to do so. Needless to say, the documents as sought to be relied upon would have to be proved in accordance with law. The First Appeal to be decided thereafter.

17. Accordingly, the matter is remanded back. Both the parties are directed to appear before the Court of District Judge, Shaheed Bhagat Singh Nagar on 19.08.2019, who will decide the matter expeditiously, preferably within a period of six months from the date of receipt of certified copy of this order.

19.07.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.