

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

RSA No. 4688 of 2019 (O&M)

Date of decision : October 24, 2019

Najjar Singh and another

.....Appellants

Versus

Hartish Singh

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Lakhwinder Singh Mann, Advocate
for the appellants.

Mr. Kanwal Goyal, Advocate
for the respondent.

LISA GILL, J.

Appellants – defendants are aggrieved of judgment and decree dated 29.03.2019 passed by the learned Additional District Judge, Jalandhar whereby judgment and decree dated 08.05.2018 passed by the learned Additional Civil Judge (Senior Division), Nakodar has been reversed, consequently suit for mandatory injunction directing the present defendants to hand over vacant possession of the shop in question has been decreed.

Brief facts necessary for the adjudication of the case are that the respondent – plaintiff filed a suit for mandatory injunction as mentioned above as well as for mesne profits while pleading that the plaintiff was an NRI. The suit was filed through his power of attorney holder - Iqbal Mohammad. It is pleaded that the property in question i.e. the demised shop and 7 marlas was originally owned by the plaintiff's grandfather, who had two sons namely Gursharan Singh and Kuldip Singh. After the death of the plaintiff's grandfather, Gursharan Singh and Kuldip Singh (father of the plaintiff - Hartish Singh) became joint owners of the entire property of their

father including the shop in question. Defendant – appellant/Najjar Singh, it is stated, was inducted as a tenant in the demised shop by the father of the plaintiff in 1988 on a monthly rent of ₹100/- and the defendants were carrying on business of general merchant in the said shop. Gursharan Singh died in UK leaving behind his sons Inderjit Singh and Parminder Singh. Kuldip Singh also passed away in 2008 leaving behind the plaintiff, his only son, as his legal heir. The property in question is pleaded to have fallen to the share of the plaintiff and rent was enhanced to ₹350/- per month in January, 2012. Defendant No. 1 continued to pay rent to the plaintiff upto the month of March, 2016 but thereafter failed to deposit the same. It is pleaded that when the plaintiff came to India in January, 2016 and demanded rent from the appellant – defendant No. 1, the plaintiff was threatened and abused by both the defendants- appellants. It is further stated that due to this reason, the plaintiff did not want to retain the defendants as his tenants. By way of legal notice dated 01.11.2016, tenancy of the defendants was terminated but the defendants failed to hand over the peaceful vacant possession of the shop in dispute. It is pleaded that after termination of tenancy, the possession became illegal and the plaintiff claimed mesne profits at the rate of ₹2000/- per month. On refusal to admit the claim of the plaintiff, the suit was filed.

Both the defendants - appellants contested the suit. Various preliminary objections were taken. It is stated that the plaintiff had no locus standi to terminate the tenancy as he was not the owner of the shop in question. The rent, it is stated, was being paid to the family of Gursharan Singh alongwith electricity bills of the shop. No rent receipt was issued by the owner – Gursharan Singh. It is stated that the plaintiff in fact had an evil

eye on the successful business when he came to India and had asked the defendants to hand over their entire business, for which they refused. The plaintiff is alleged to have threatened the defendants with illegal and forcible dispossession. It is stated that the shop was taken on rent from Gursharan Singh since 1988 on an oral rent agreement on monthly rent of ₹300/- per month and it was mutually extended from time to time upto ₹350/- per month. Dismissal of the suit was sought.

Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- 1) Whether plaintiff is entitled to decree of mandatory injunction as prayed for?OPP.
- 2) Whether the plaintiff is entitled to recover mesne profit at the rate of ₹2000/- per month for illegal use and occupation of the demised shop?OPP
- 3) Whether present suit is maintainable? OPP.
- 4) Whether plaintiff has got locus standi and cause of action to file the present suit? OPP.
- 5) Whether the plaintiff is estopped to file the present suit by his own act and conduct?OPD
- 6) Whether plaintiff has not come to the Court with clean hands?OPD
- 7) Relief.

Evidence was led by both the parties to substantiate their respective claims.

Learned trial Court concluded that the relationship of the landlord and tenant between the parties stood established as it is admitted by DW1 defendant – Sarabjit Singh in his testimony that rent in question used to be paid to Iqbal Mohammed being attorney of the plaintiff for the last two

years. The suit filed by the plaintiff was, however, dismissed on the ground that the suit for mandatory injunction was not maintainable and it was a suit for possession which should have been filed by the plaintiff. Appeal filed by the plaintiff – respondent was, however, allowed by the learned Additional District Judge, Jalandhar vide judgment dated 29.03.2019. It is observed by the learned Additional District Judge, Jalandhar that the plaintiff cannot be non-suited, singularly on the ground that it is the suit for possession which should have been filed and not for mandatory injunction. Aggrieved therefrom, present appeal has been filed.

Though notice of motion was not issued in this case, Mr.Kanwal Goyal, Advocate has appeared on behalf of the respondent – landlord.

Learned counsel for the appellant vehemently argues that the learned Additional District Judge, Jalandhar has erred in fact and on law in reversing the well reasoned judgment passed by the learned Additional Civil Judge (Senior Division), Nakodar. It is vehemently argued that when claiming the relief of possession, the present suit for mandatory injunction, simplicitor, is not maintainable. Relationship of landlord – tenant in any case, is not proved on record and the plaintiff is not proved to be the owner of the property in question. It is, thus, prayed that this appeal be allowed, judgment and decree dated 08.05.2018 passed by the Additional Civil Judge (Senior Division), Nakodar be upheld while setting aside judgment and decree dated 29.03.2019 passed by the learned Additional District Judge, Jalandhar.

Learned counsel for the respondent, however, refutes the above said arguments and submits that the learned Additional District Judge,

Jalandhar has passed a well reasoned and logical judgment which calls for no interference. Learned counsel for the respondent further submits that even as per Section 7 of the Court Fees Act, 1817, the court fee to be paid is with reference to the amount of yearly rent of the suit property, payable for the year next before the date of presenting the plaint. In the present case, adequate court fee has also been appended. Thus, there is no ground whatsoever for setting aside the impugned judgment and decree dated 29.03.2019. It is, thus, prayed that this appeal be dismissed.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

It is a matter of record that the appellants - defendants have admitted, that the property in question was taken on rent by them from Gursharan Singh in the year 1988 on a monthly rent of ₹100/-. Defendant No. 2 – Sarabjit Singh who deposed as DW1 before the learned trial Court admitted that the tenancy in question was oral and that the rent was paid to Iqbal Mohammed, the power of attorney holder of the plaintiff. It is pertinent to note that the suit was filed through Iqbal Mohammed, power of attorney holder of the plaintiff, who otherwise lives in UK. Appeal was also filed on behalf of the plaintiff before the learned Additional District Judge, Jalandhar through Iqbal Mohammed as the power of attorney holder of the plaintiff - Hartish Singh. It has been rightly held by both the learned courts below that there can be no better evidence than the admission of the defendant in respect to the relationship of landlord and tenant between the plaintiff and defendants.

At this stage, it is relevant to note that the learned trial Court has concluded that there is no dispute regarding the relationship of landlord

and tenant between the parties. The plaintiff has in fact been non-suited only on the ground of the suit being filed for mandatory injunction, without any prayer seeking possession of the suit property. Even before this Court, the primary argument addressed is that a suit for mandatory injunction is not maintainable and no serious argument has been raised in respect to the existence of relationship of the landlord and tenant between the parties. Insofar as the argument raised by learned counsel for the appellants in respect to the maintainability of the suit for permanent injunction is concerned, need not detain this Court for long. The Hon'ble Supreme Court in **Sant Lal Jain versus Avtar Singh 1985 AIR (SC) 857** has held that the relief can be afforded to the plaintiff in such a situation where suit for mandatory injunction has been filed for directing the lessee to vacate the premises. In case of **Sant Lal Jain** (supra), the property in question had been on lease for a term of ten (10) years. It has been held by the Hon'ble Supreme Court that a party cannot be denied relief merely on the ground that the plaint had been couched in the form of a suit mandatory injunction though the suit was in fact one for possession. The effort, it is held, should be to avoid multiplicity of suits and the licensor should not be driven to undertake another round of litigation. In the present case, the plaintiff has clearly stated that the rent in question was paid to him up-to March, 2016. When he came to India in November, 2016 and demanded rent, the defendants abused and threatened him. Legal notice dated 01.11.2016 terminating the tenancy of the defendant was immediately served. The suit was promptly filed on 23.01.2017. Therefore, there is clearly no delay in filing of the suit. Therefore, learned Additional District Judge has rightly observed that the present case does not even fall in the categories as

mentioned in **Mandir Thakar Dwara, Lalru versus Mehar Singh 2003(2) RCR (Civil) 494**, which calls for a direction for deposit of court fees by the plaintiffs. Learned Additional District Judge has, thus, rightly held that the plaintiff's suit has been erroneously dismissed while misinterpreting the provisions of law and there can be no insistence for filing of a suit for possession instead of mandatory injunction in the given factual matrix. No argument in respect to mesne profits has been raised either in the Grounds of Appeal or at the time of arguments.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law, much less a substantial question of law, is involved for consideration in this appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 29.03.2019 passed by the learned Additional District Judge, Jalandhar which calls for any interference by this Court in second appeal.

There is a delay of 113 days in filing of RSA No. 4688 of 2019. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is, accordingly, disposed of.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

(Lisa Gill)
Judge

October 24, 2019
rts

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