

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

**RSA No.2155 of 2018(O&M)
Date of Decision: 11.02.2019**

Satish Sharma

.....Appellant

Versus

Rajesh Kumar and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Jaideep Verma, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Defendant No.1/appellant is in regular second appeal against the judgments and decrees passed by the Courts below in a suit for possession, permanent injunction and recovery.

[2]. The suit was partly decreed by the trial Court with costs and defendant No.1/appellant was directed to hand over the vacant possession of the shop in question to the plaintiff/respondent No.1 within a period of one month from the date of decree, failing which the plaintiff was held entitled to get the possession with the process of the Court. Plaintiff was also held entitled to recover mesne profits @ Rs.5000/- per month from defendant No.1/appellant w.e.f. 20.10.2008 till 20.03.2016, total amounting to Rs.4,45,000/-. In the event of not paying the aforesaid amount within a period of one month from the date of

decree, the plaintiff was held entitled to interest @ 6% per annum on the aforesaid amount till actual realisation of the same. Plaintiff was further held entitled to recover future amount for use and occupation @ Rs.5000/- per month till the property is vacated and possession was handed over to the plaintiff by defendant No.1/appellant.

[3]. Lower Appellate Court partly modified the decree on the premise that the inquiry was required to be held in case of granting mesne profits for the period after filing of the suit till the property is vacated. The award of Rs.4,45,000/- was held to be not on account of inquiry held by the trial Court and therefore, the decree could not be passed regarding mesne profits without holding the inquiry. The order of recovery of mesne profits for the period of three years i.e. 20.10.2008 to 01.01.2010 @ Rs.5000/- per month was held to be proper. The awarding of mesne profits to the plaintiff for the period after institution of the suit was set aside. In view of above, the decree of the trial Court was modified.

[4]. Perusal of the record would show that Ramji Dass grand-father of the plaintiff was the owner in possession of the shop in dispute. Ramji Dass had let out this shop in favour of Vishwamitter vide rent note dated 26.01.1977 @ Rs.133.34 paise per month. After the demise of Ramji Dass, Vishamitter

started paying rent to his son Sohan Lal and relationship of landlord and tenant was established between Sohan Lal and Vishwamitter. After the demise of Vishwamitter, the tenancy was inherited by his son Bhupinder Pal Puri who also started paying rent at the same rate to Sohan Lal thereby accepting the bilateral obligations. However, no fresh rent note was executed between them. Terms and conditions of rent note dated 26.01.1977 remained intact. Sohan Lal was father of the plaintiff who also expired on 26.12.2001. After the demise of Sohan Lal, Bhupinder Pal Singh started paying rent to the plaintiff against rent receipts. Therefore, the relationship of landlord and tenant existed between the parties i.e. the plaintiff and Bhupinder Pal Singh. No fresh agreement was executed. Plaintiff became owner of the property after the demise of Sohan Lal. Bhupinder Pal Puri himself surrendered his tenancy rights in favour of the plaintiff vide writing dated 05.10.2008 and also delivered possession of the demised premises in favour of the plaintiff on the same day. The writing was witnessed by Bhola who is real brother of defendant No.1/appellant. The writing was also witnessed by Raj Kumar son of Harbans Lal. The possession of the demised premises was given to the plaintiff on 05.10.2008 and at the time of delivery of possession by Bhupinder Pal Puri to the plaintiff, Nasib Singh son of Maghar Singh and Bhola real

brother of defendant No.1 were also present and plaintiff put his locks over the demised premises in question on 05.10.2008. In this manner, bilateral relationship as landlord and tenant between Bhupinder Pal Puri and the plaintiff came to an end with the execution of writing dated 05.10.2008 and thereafter, possession was duly delivered in favour of the plaintiff. Bhupinder Pal Puri surrendered his tenancy rights as he was to go abroad and was in need of money and now Bhupinder Pal Puri is permanently settled abroad. Defendant No.1 was never admitted as tenant by the plaintiff, nor there was any relationship of landlord and tenant between them. Defendant No.1/appellant is alleged to have occupied the premises illegally by breaking open the locks in the intervening night of 19/20.10.2008. Complaint filed before the Police yielded no result. Thereafter, the suit for permanent injunction was filed by the defendants. The injunction was refused by the trial Court on 11.11.2008 and possession of the defendants was held to be illegal. They remained unsuccessful in the appeal before the Lower Appellate Court which was dismissed on 24.03.2009. Defendant No.1 was held to be trespasser and was held liable to pay mesne profits @ Rs.5000/- per month.

[5]. Both the Courts below have appreciated the evidence on record. The trial Court decreed the suit partly on the premise

that Bhupinder Pal Puri was found to be tenant of the plaintiff. Writing dated 05.10.2008 (Ex.P1) was executed by Bhupinder Pal Singh and possession of the suit property was handed over to the plaintiff, thereby bringing an end to the relationship of landlord and tenant. The writing was witnessed by real brother of defendant No.1 namely Bhola. Plaintiff has proved the writing by examining himself as well as attesting witness namely Raj Kumar (PW 1). Bhola has not stepped into witness-box being real brother of defendant No.1. Defendant No.1 was having cordial relationship with Bhola as they were living in the same house. Bhola was not examined as witness by defendant No.1 though he had been attending the Court proceedings. The trial Court drew adverse inference against defendant No.1. Bhola could have been the best witness in respect of genuineness or otherwise of the writing dated 05.10.2008 (Ex.P1). The alleged partnership deed dated 22.05.2008 (Ex.D6) was held to be bogus and sham transaction and the same was manufactured to retain the possession of the demised premises in an illegal manner. Defendants could not prove any business in the name and style of "Puri Tailors" in the demised premises. No bills were produced on record, nor income tax returns were placed on record in the name of "Puri Tailors". Even Bhupinder Pal Puri was not examined as witness to prove any alleged partnership

between defendant No.1 and Bhupinder Pal Puri. The signatures of Bhupinder Pal Puri on Ex.P1 were found to be genuine signatures by the expert witness i.e. Dr. Navdeep Gupta (PW 4) in his report Ex.PW4/1.

[6]. Taking overall stock of the material evidence on record, the Courts below have appreciated the evidence and thereafter, came to factual findings of fact thereby partly decreeing the suit which was upheld by the Lower Appellate Court except to amend the decree in terms of grant of mesne profits. Plaintiff is not aggrieved by the amendment in decree in question in any manner.

[7]. In view of above, the findings of fact recorded by the Courts below are not found to be the result of any misreading of evidence or suffered with any perversity. No question of law worth consideration arises in this appeal. This appeal is accordingly dismissed. Since the main appeal has been dismissed on merits, therefore, there is no necessity to pass any order in the application for condonation of delay in re-filing the appeal. All other remaining applications are accordingly disposed of.

11.02.2019

Prince

Whether reasoned/speaking

Whether reportable

Yes/No

Yes/No

(RAJ MOHAN SINGH)
JUDGE