

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.6491 of 2018(O&M)

Date of Decision:07.02.2019

Des Raj

.....APPELLANT

Vs.

Babu Ram

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

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

Mr.Sandeep Goyal, Advocate for the  
Caveator-respondent.

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DR. RAVI RANJAN, J.(Oral)

C.M. NO.2233-C-2019

This application has been filed for placing on record the sale deed dated 16.07.1997 as Annexure A-1.

Application is allowed as prayed for. Sale deed dated 16.07.1997 is permitted to place on record as Annexure A-1 of the same has already been taken in record by the Trial Court as Ex.P5.

RSA No.6491 of 2018(O&M)

I have heard learned counsel for the parties and perused the materials on record.

This appeal is directed against the Judgment and Decree dated 11.09.2018 passed by Ld. Addl. District Judge, Sangrur in Civil Appeal No.529 of 15.12.2017, by which he has affirmed the findings recorded in Judgment and Decree dated 15.11.2017 passed by Civil Judge(Jr. Divn.), Sunam in Civil Suit

No.314 of 21.12.2013 of the plaintiff-respondent. The defendant is the appellant and plaintiff is the respondent herein.

Short facts necessary for consideration of the *lis* stand enumerated as under:-

The suit for declaration of title and recovery of possession was filed by the plaintiff/respondent against the defendant-appellant stating that the plaintiff-respondent is owner of the house/property in dispute, as shown in the site plan Mark-X, which he had purchased from the defendant-appellant vide sale deed No.1753 dated 16.07.1997, which stands marked as Ex.P5. If is further claimed that mutation, accordingly, was also sanctioned in favour of the plaintiff-respondent. After coming into possession, the plaintiff-respondent demolished the constructed portion of the suit property and, thereafter, constructed two shops, one room on the ground floor, one room on the first floor, kitchen, verandah, toilet, bathroom and electric meter was also installed in the house. He also installed new electric connection for the shops. According to the plaintiff-respondent, the land was situated near the bus stand and the plaintiff also used to run a clinic/hospital in the shops under the name and style of '*Kaushal Nursing Home*' where also, he got installed another electricity connection No.34338. In addition to this, the plaintiff was having his voter identity card and ration card and his wife also carried her passport and identity card showing the place of residence to be the property in dispute. If is further averred that the wife of the plaintiff received appointment letter at the same residence. In the year 2004, the wife of the plaintiff got transferred to Patiala. In the result, the plaintiff went to Patiala along with his family. Though, the house was locked but he often used to visit the suit property. The plaintiff was also paying house tax of the shops to Nagar Panchayat, Cheema and his ownership is

entered in the assessment register of the Nagar Panchayat. It is alleged that in the year 2008, when the defendant-appellant came at Patiala, he requested the plaintiff to give the house/property in dispute to him for six months as he had to keep some articles therein. Believing the defendant, the plaintiff gave him possession of the said house/property as licensee and also directed him that as and when he will ask him to vacate the same, he would have to vacate the said house. In the year 2010, plaintiff decided to let out the said house and shops on rent for earning income then he asked the defendant to vacate the premises in dispute but he refused to vacate. The matter was reported to the police also but, as the defendant was having influence over the police, the police did not take any action against him. Thereafter, the defendant also broke the shutters of the shops and further raised construction of walls without the permission of the plaintiff. Thus, the plaintiff sought a relief that, since the defendant is in illegal possession of the disputed property and the plaintiff is having title over it, he is entitled to get back possession of the same. The plaintiff further sought a relief for Rs.5,000/- per month on account of *mesne profit* w.e.f. 01.12.2010 (when the defendant refused to vacate the land) till 30.11.2013 (which is the date of filing of the suit) and further, till the actual realization of amount and recovery of possession. He also sought a compensation from the defendant to the tune of Rs.50,000/- for causing loss to the plaintiff by breaking the shutters of the shops and making certain constructions without his permission.

Upon notice, the defendant appeared before the Court below and filed his written statement raising technical issues of locus-standi, cause of action, maintainability etc. It is stated by the defendant that wrong site plan has been given by the plaintiff along with the plaint, however, when the learned counsel was confronted with the question at the time of hearing by this Court

that as to whether the correct site plan was brought on record by the defendant, he had to cut a sorry figure because it was never done.

It is pointed out that there is no street towards eastern side, rather the same is personal property of the defendant and there are other discrepancies also with respect to the boundaries shown in the site plan. It is also stated that there is no shop in the property shown in the site plan as suit property is not in the commercial area as also that the plaintiff has no concern with the property which has been shown in the site plan. The defendant has claimed himself as owner in possession of the suit property since 1985. The defendant agreed that he had sold 02 marlas of vacant land bearing Khasra No.385/5/7/1(0-2) to the plaintiff but the said 02 marla land is not the land which has been shown by the plaintiff in the site plan as only vacant land was sold without any construction. It has further been stated that, since the vacant land was sold to the plaintiff, the question of installing any electric meter in the said land does not arise at all, which was actually installed by the defendant in his name in the year 1995 on the construction made in 1985 and the same is still in existence on the spot and the defendant is paying the electricity charges of the same till date.

Upon the aforesaid facts raised by the defendant in his pleadings, again a question was asked by this Court-if the construction was existing since 1985 why electrical meter was installed after 10 years in 1995? To this query also, the learned counsel for the appellant-defendant does not have any answer.

The defendant has further stated that the plaintiff may be relegated to the revenue authorities for demarcation of the property sold to him which may initiate a proceedings against the person who would be found in possession of his property. However, again it has not been stated anywhere that actually who was in possession of the property and which property actually was sold, by

bringing on record any site plan. It is further alleged that ration card, voter identity card and telephone bills etc do not relate to the said property.

On considering the pleadings of the parties, the Trial Court framed following issues:-

- “1. Whether the plaintiff is entitled for possession on the basis of ownership of house, as prayed for? OPP
2. Whether the plaintiff is entitled for *mesne profit* as prayed for? OPP.
3. Whether the plaintiff has no *locus-standi* and cause of action to file the present suit? OPD.
4. Whether the suit is not maintainable in the present form? OPD.
5. Whether the plaintiff has not come to the court with clean hands? OPD.
6. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD.
7. Whether the suit of the plaintiff is beyond limitation?OPD
8. Whether the suit is not properly valued? OPD.
9. Whether the plaintiff is not owner of the house in dispute?OPD.
10. Relief.”

Plaintiff, in order to prove his case, examined himself as PW1, and further examined PW-2 Amarjit Kumar, Clerk, Nagar Panchayat, Cheema, PW3 Vikas Jindal, Food Inspector, PW4 Ram Piari @ Jasvir Kaur, PW5 Subhash Chand, PW6 Gurtej Singh, PW7 Lachhman Singh, PW8 Punit Mittal, Architect and PW9 Atma Singh and after tendering documents, the plaintiff-respondent has closed his evidence.

Plaintiff has proved on record voter identity card Ex.P1, endorsement Ex.P2, voter identity card of his wife Ex.P3, endorsement Ex.P4, original sale deed No.1753, dated 16.07.1997 Ex.P5, endorsement Ex.P6, site plan Ex.P7, endorsement Ex.P8, cylinder voucher Ex.P9, bill of cylinder Ex.P10, copies of assessment forms for the year 2004-05 and 2002-03 Ex.P11

and Ex.P12 respectively, copy of appointment letter of his wife Ex.P13, receipts of Nagar Panchayat Ex.P14 to Ex.P16, telephone bills Ex.P17 to Ex.P20 and Ex.P37, electricity bills Ex.P21 to Ex.P34, copy of the passport of his wife Bimla Devi Ex.P35 and original site plan Ex.P36.

The case of the plaintiff has already been discussed above and in support of the same, he has already brought on record the aforesaid documents. While being examined as witness, the plaintiff and other witnesses have supported his point of view.

The Court below has noticed that the plaintiff was cross-examined in detail by the counsel for the defendant on the points regarding dimension of the property in question and even execution of the sale deed of the vacant plot and site plan produced on record Ex.P7 and further regarding the documents produced by him in evidence such as electricity bills, aadhar card and site plan Ex.P36 etc. However, on part of the defendant, there is only oral contention that the property in dispute is not the same property which is being alleged by the plaintiff or which was sold by the defendant.

The Trial Court has also referred to Sections 91 & 92 of Indian Evidence Act, 1872 (for brevity 'the Act') for the purpose that if the terms of contract or of a grant or any other disposition of property, have been reduced to the form of a document in the manner which is required by law, no evidence would be required for proof of the terms of such contract, grant or other disposition of property or of such matter, except the document itself. If terms of such contract or grant or other disposition of property or any matter required by law to be reduced to the form of a document have been done in accordance with Section 91 of the Act, then, as per Section 92 of the Act, no evidence of any oral agreement or statement shall be admitted as between the parties to such

instrument or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from, its terms.

The Trial Court has taken notice that the defendant in his cross-examination has admitted the site plan, sale deed, bills and other documents produced on record which would amount to be admission on the part of the defendant. Thus, oral arguments on behalf of the defendant cannot wash-away or water down such documentary evidence.

PW-4, i.e., Ram Piari @ Jasvir Kaur, who claimed that she has worked at Kaushal Nursing Home since the year 1997 to 2002, has proved that the plaintiff and his family members were residing in the disputed property as also duly proved the dimension as mentioned by the plaintiff.

Plaintiff has further examined PW-2 Amarjit Kaur, Clerk, Nagar Council, Cheema, who has brought on record the assessment register of the year 1998-99 and placed on record the copy of Register as Ex.P38 and has further deposed that all the receipts produced by him are with respect to plaintiff-Babu Ram son of Durga Ram care of Kaushal Nursing Home.

It has also been noticed in the Judgment of the Trial Court that learned counsel for the defendant cross-examined this witness at length regarding the permission for the construction of the property in question, however, he has stated that he cannot comment upon that as it was the duty of the concerned Clerk and further that, even at the time of assessment, a rough estimate is prepared and its entry is to be made in the office and even there is Survey Register maintained by the department.

However, the Trial Court has discarded the version of the defendant regarding the entry in question as having no relevancy to rebut the evidence of this witness. The defendant has not examined any concerned witness. He has

examined himself only as DW1.

He could have examined any witness from the Nagar Panchayat in support of his case that the property in question is in his possession. The plaintiff has also examined PW-3 Vikas Jindal, Inspector Food & Civil Supply, Cheema who has deposed regarding the issuance of Ration Card in favour of the plaintiff on the address of the house/property in question. He has also placed on record copy of the Ration Card as Ex.P39. He was also cross-examined at length but the Trial Court has noted that nothing could be extracted by the defendant from him. He has further deposed at the time of cross-examination that at the time of preparation of Ration Card, the proof regarding ownership of the house in question is used to be considered and on proper verification only by visiting the address in question, the ration cards are prepared.

The plaintiff has further examined Subhash Chand, a Clerk of Nagar Council, Cheema as PW5, who has proved the assessment register for the year 1988-89 and has categorically stated that assessment was done personally by him and in the result, he made the relevant entries on page no.57 regarding the ownership of the plaintiff-Babu Ram and placed on record copy of the same as Ex.PW5/1. However, no evidence had been led by the defendant to rebut the version of this witness.

Further, the plaintiff has examined Lachman Singh, Mason as PW7, who claims that he has made construction at the behest of the plaintiff upon the property in dispute. The plaintiff has also examined Puneet Mittal, the Architect as PW8, who has proved the valuation report as Ex.PW8/A. He has stated that he visited the spot and prepared a valuation report.

One Atma Singh son of Dial Singh, from the office of Superintendent, BSNL, Sunam has also been examined by the plaintiff as PW9,

who has brought on record a demand notice Ex.PW9/A to prove the installation of telephone in the name of plaintiff on the property in dispute. Not only that, the plaintiff has tendered copy of mutation No.13612/A Cheema-A as Ex.P40 and copy of *jamabandi* as Ex.P41 which reveals that it contains entries regarding the ownership of the plaintiff-Babu Ram. Even the sale deed in question reveals that the same had been executed by the defendant which is admitted also after passing due sale consideration and the dimensions of the suit property also stands mentioned therein along with the boundaries.

The Trial Court has further noticed from the perusal of the site plan Ex.PW6/A that it also bears the signatures of defendant and which has not denied by him.

The case of the defendant is that he has sold some other property to the plaintiff but to prove the same, neither he has examined any witness nor has he placed on record any document. The Trial Court has found that his contentions are vague which is not reflected specifically either from the written statement or from whole of the evidence. If he is in possession of the property in dispute, nothing has been brought on record to prove that save and except that he has stated that telephone connection was in his name but that is for the period during which, according to the plaintiff, he was in possession of the land/property in dispute as his licensee. Moreover, Ex.PW5/1, i.e., the sale deed itself suggests that defendant himself has delivered the possession of the property in favour of the plaintiff. Thus, his contention that there are several co-owners of the total property of 07 marlas so no possession could have been given to the plaintiff, falls flat for the reason that he cannot make a plea against the recitals of the sale deed which stands admitted by him. It appears that the defendant-appellant has raised objection regarding the admissibility of the

documents like electricity bill, telephone bill and ration card etc. but this Court is completely at loss as to how such objection could be raised. If the plaintiff was not in possession of the property in question from where he could have generated the electricity bills, telephone bills and ration card etc. which stand duly proved by the respective witnesses from the concerned department? The defendant has not taken any stand that these documents are the result of forgery or the same have been fabricated. In the absence of that, his objection would not be tenable.

Since the defendant was a permissive possessee over the suit property, the moment he was asked to vacate the premises, such permission or licence has to be considered to have ceased. Here it would also be apt to note that Section 52 of the Indian Easements Act, 1882 defines license whereas lease of immovable property stands defined in Section 105 of the Transfer of Property Act, 1882. The Hon'ble Superme Court in its decision rendered in '**Mangal Amusement Park (P) Ltd. and Another Vs.State of Madya Pradesh & Others**', **AIR 2012 SC 3325**, has dealt with the issue and has discussed the distinction of lease from licence. It is held that lease is not merely a contract but envisages and transfers an interest in the demised property by creating a right in favour of the lessee *in rem*. Whereas, a license only makes an action lawful without which it would be unlawful but does not transfer any interest in favour of the licensee with respect to the said property. Thus, since no right, title or interest was transferred by giving permission or license to a person to occupy the premises without any consideration amount or rent, such type of license is even not required to be reduced in writing or to be registered.

The defendant has not been able to prove the ownership upon the land in dispute by producing any document or any evidence whereas the plaintiff has been able to prove the same by bringing on record the sale deed and the site plan and also the other documents showing his possession subsequent to the sale as has been discussed above. Thus, it can safely be held that the plaintiff was entitled for possession of the property in dispute as he has proved ownership regarding the suit property and since the license or permission given by him to the defendant to occupy the premises cease to exist on 20.12.2012 when the plaintiff desired him to vacate the premises, the Trial Court has correctly calculated the *mesne profit* from 20.12.2012 to 20.12.2013. Though, the plaintiff's demand was that it should be Rs.5,000/- per month but the *mesne profit* has been calculated @ Rs.3,000/- per month only which, by no angle, can be held to be excessive one and further, the plaintiff has rightly been held entitled to *mesne profit* at the same rate from the date of filing of the suit till delivery of possession of the suit property is given back to the plaintiff.

Since the plaintiff's case is that his shutters etc. were removed by the defendant and without his permission, certain construction were made and the defendant has miserably failed to establish that he is the owner of the property in question, the Trial Court has correctly held the plaintiff is entitled for the compensation amounting to Rs.20,000/- also on account of suffering loss of property during the premises was used by the defendant, which could have been even at the higher side but this Court would not go into that for the reason that there is no cross-appeal/cross-objection.

The Judgment and Decree was challenged by the defendant by filing Civil Appeal No.529 of 15.12.2017 but the Ld. Addl. District Judge, Sangrur, vide his Judgment dated 11.09.2018, has upheld the findings recorded

by the Trial Court and has dismissed the appeal.

In view of the discussions made above, this Court is also of the view that no good ground could be raised by the appellant-defendant warranting interference in the impugned Judgments and Decrees and no substantial question of law, in the opinion of this Court, is involved in this appeal.

That apart, learned counsel for the appellant-defendant has also not been able to raise any ground in terms of Section 41 of the Punjab Courts Act, 1918 to demonstrate before this Court that the impugned decisions are contrary to law or some custom or usage having the force of law. He has also not been able to show that both the Courts below have failed to determine any material issue of law or custom or usage having the force of law.

In the result, this appeal, being devoid of any merit, is dismissed. However, the parties will bear their own costs.

(DR. RAVI RANJAN)  
JUDGE

07.02.2019  
Anjal

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|-----------------------------------|---------------|
| <b>Whether speaking/reasoned?</b> | <b>Yes/No</b> |
| <b>Whether reportable?</b>        | <b>Yes/No</b> |