

IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH

RSA No.112 of 2019 (O&M)
Dated of decision:11.01.2019

Anand Kumar Kataria

....Appellant

Versus

Managing Committee, Arya College, Panipat

...Respondent

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present:- Mr. Arun Singal, Advocate
for the appellant.

LISA GILL, J.

The plaintiff/appellant is aggrieved of judgments and decrees dated 29.10.2018 and 18.12.2018 passed by the learned Civil Judge (Junior Division) and the learned Additional District Judge, Panipat, respectively, whereby suit for declaration with consequential relief of permanent injunction filed by the plaintiff, has been dismissed.

Brief facts necessary for adjudication of the case are that the plaintiff filed a suit for declaration with consequential relief of permanent injunction to the effect that order dated 28.09.2011 passed in Rent Petition No. 22/2 of 2011 titled as Managing Committee Vs. Inder Singh Kataria etc., by the learned Rent Controller, Panipat is illegal, null, void, inoperative and having no value in the eyes of law and hence not binding upon the rights of the plaintiff. It was averred by the plaintiff that his father Sant Ram took shop Nos.4 and 5, on rent from the defendant in the year 1978-79 on the basis of an

oral rent agreement. Sant Ram started running a transport business therefrom and was regularly paying the rent to the defendant. During his lifetime, Sant Ram father of the plaintiff got his business partitioned between his sons i.e. the plaintiff and his elder brother Inder Singh. Appellant was running his business from shop No.4, whereas his brother was conducting his business from shop No.5. The plaintiff besides obtaining an electricity connection, had also raised a loan from UCO Bank under the name of Kataria Bus Service while giving his address as of the demised shop. The defendant alongwith his supporters on 02.12.2016 tried to forcibly evict the appellant from the premises. When their attempts of forcible eviction were resisted by the plaintiff, the defendant showed him a copy of the judgment/order dated 28.9.2011 passed by the learned Rent Controller, Panipat. Thereafter, the plaintiff enquired about the passing of the said judgment/order of eviction. Thereupon, the plaintiff came to know that the defendant had secured an eviction order dated 28.09.2011 while claiming the appellant's brother Inder Singh Kataria to be the tenant of the premises. Neither the plaintiff was impleaded as party in the said proceedings nor any statement of the plaintiff was ever recorded. It was pleaded that the plaintiff was a tenant of the premises through his brother Inder Singh Kataria. Rent was paid by the appellant through his brother to the landlord. As the plaintiff's possession over the tenanted premises was peaceful, continuous and there being no default on his part in payment of arrears of rent, the impugned judgment/order dated 28.09.2011 was totally illegal and inoperative qua the rights of the plaintiff.

The suit was contested by the defendant. Written statement was filed. Defendant stated that eviction petition was filed against Inder Singh Kataria, tenant of Shop Nos.4 and 5 and against Vikas Sharma, being a sub-tenant over the suit property. The plaintiff was not impleaded because he was not in possession of the suit property. Ejectment order was passed by the learned Rent Controller on 28.09.2011. Appeal filed against the said order dated 28.09.2011 by Inder Singh Kataria was also dismissed by the learned Appellate Authority. It was further stated that in fact it was the appellant's brother Inder Singh Kataria, who has got the present suit filed through his brother in order to thwart implementation of judgment dated 28.09.2011. It was denied that any transport business was carried on from the suit property by the plaintiff. The premises in question were never let out to the appellant by the landlord. Dismissal of the suit was prayed for.

From pleadings of the parties, following issues were framed by the learned trial court: -

1. Whether the plaintiff is entitled to the decree for declaration with consequential relief of permanent injunction as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable in present form? OPD
3. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD
4. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
5. Whether the plaintiff has concealed the true and material facts from the court? OPD
6. Relief.

Evidence was led by both the parties in support of their respective claims.

Learned trial court on appreciation of the facts, circumstances and evidence on record concluded that the plaintiff failed to prove the factum of his tenancy under the defendant and the plaintiff had no cause of action to file the present suit. Suit filed by the plaintiff was thus dismissed on 29.10.2018. Appeal filed by the plaintiff was also dismissed by the learned Additional District Judge, Panipat vide impugned judgment and decree dated 18.12.2018. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that from the evidence on record i.e. electricity bills from the year 1995 onwards, possession of the appellant over the demised premises i.e. shop No.4 stood proved. Loan was taken by the appellant from UCO Bank. Document in this respect was also proved on record. It is further submitted that filing of income tax returns with the address of Shop No.4 opposite bus stand Arya College GT Road, Panipat is admitted. Moreover, DW1 has admitted that the present appellant is in possession of the demised property due to which they could not get possession thereof pursuant to order dated 28.09.2011 passed in the rent petition No.22/2 of 2011. It is urged that once possession of the appellant of the demised premises was proved, it was incumbent upon the courts below to have awarded the permanent relief of permanent injunction. At best, the respondent would be at liberty to take possession of the premises from the appellant in due course of law.

I have heard learned counsel for the appellant at length and have gone through the photocopy of the record, furnished in Court today.

Admittedly, the premises in question were taken on rent by the appellant's father Sant Ram in the year 1978-79. Plaintiff is claimed to be a tenant on the said premises through his brother Inder Singh Kataria. It is the specific averment of the appellant/plaintiff that he was regularly paying the rent of his share to the defendant-landlord through his elder brother Inder Singh Kataria. It was further pleaded that the appellant was conducting his transport business from the shop in question. Learned counsel for the appellant is however unable to point out any evidence on record to indicate that rent was being paid to the defendant-landlord through the appellant's brother Inder Singh Kataria. At this stage, it is relevant to refer to the statement of the appellant-plaintiff who deposed as PW4. It is admitted by PW4 that he is not doing any business of transport since year 2005-06. The present suit was filed in the year 2016, therefore, no credence can be placed on the said averments in the plaint. Furthermore, neither is there any pleading nor any evidence to show that relationship between the plaintiff/appellant and his brother Inder Singh Kataria were strained or that he was kept in the dark about the ejectment proceedings. It is, thus, rightly held by both the learned courts below that the appellant-plaintiff failed to prove the factum of his tenancy under the defendant. There is nothing on record to show that the plaintiff/appellant remained blissfully unaware of the proceedings of ejectment initiated by the defendant against Inder Singh Kataria and his sub tenant Vikas Sharma. It indeed seems to be an ingenious ploy to retain

possession of the premises. It is a matter of record that the respondent sought eviction of the appellant's brother Inder Singh Kataria from the demised premises on various grounds including that of personal bonafide necessity, inasmuch as the premises were claimed to be required for expansion of the Arya College, Panipat. Eviction petition was allowed on the ground of personal bonafide necessity of respondent-landlord i.e., expansion of the college. Appeal by the appellant's brother was dismissed on 06.12.2012. Present suit was filed by the appellant on 23.01.2016.

Another argument raised on behalf of the appellant/plaintiff is that possession of the appellant over the premises in question having been proved, relief of permanent injunction sought, should at least have been afforded and at best the defendant/respondent would be entitled to secure possession of the premises from the appellant/plaintiff in due course of law. This argument is rejected being inherently flawed. Such an interpretation would necessarily lead to an anomalous situation and is not warranted in the facts and circumstances of the case.

Both the courts below have rendered concurrent findings of fact on the basis of proper appreciation of the evidence on record which do not call for any interference by this Court.

No other argument has been raised.

Learned counsel for the appellant-plaintiff is unable to point out any question of law, much less substantial question of law, which may be involved for consideration in this Regular Second Appeal. Both the impugned

judgements are well reasoned and rendered after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 29.10.2018 and 18.12.2018 passed by Civil Judge (Junior Division) and Additional District Judge, Panipat, respectively, which may warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to costs.

(LISA GILL)
JUDGE

January 11, 2019
Ishwar/om

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