

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

RSA-2139-2019(O&M)

Date of decision:-2.12.2022

Nand Kishore and another

...Appellants

Versus

Lakhwinder Kaur

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Prateek Sodhi, Advocate
for the appellants.

Mr.R.S. Bains, Senior Advocate with
Mr.Vishesh Chandok, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Ms.Lakhwinder Kaur wife of Sh.Kirpal Singh, resident of 36-Kabir Park, Amritsar at present resident of House No.102, Satguru Ram Singh Colony, Kot Khalsa, Amritsar had brought a Civil Suit No.27596 of 2013 for grant of mandatory and permanent injunctions

against defendants Nand Kishore son of late Sain Dass and his wife Smt.Nirmal Kaur alias Neelu, residents of One Room in House No.102, Satguru Ram Singh Colony, Kot Khalsa, Amritsar.

2. As per the version of the plaintiff, originally Major Mohinder Singh Sarkaria was owner of property/plot measuring 166.6 Sq.yards situated at Abadi village Kojha Singh Colony, Near Satguru Ram Singh Colony, Kot Khalsa, Tehsil and District Amritsar; the plaintiff and her husband were residing in that property, which was in dilapidated condition; the defendants were also having their residence in a room marked as ABCD and shown in red colour in the site-plan attached with the plaint; the defendants were residing in that room at mercy of Major Mohinder Singh Sarkaria in the capacity of being licensee; Major Mohinder Singh Sarkaria had sold that property to the plaintiff for a sum of Rs.5 lakhs vide registered sale deed dated 19.3.2013, in that way, the plaintiff became owner in possession of such property; the plaintiff got the site-plan sanctioned and raised construction of building on the said property; the defendants had requested the plaintiff to allow them along with their family to live in a room as a licensee agreeing to vacate that room after two months; the plaintiff acceded to that request; thereafter the plaintiff along with her husband approached the defendants and requested them to vacate the room and hand over the vacant possession thereof to them since their licence period had

expired but the defendants refused to do so; the plaintiff and her husband had made such request to the defendants in the month of September, 2013 but to no effect. As such the plaintiff brought the suit in question.

3. On notice, the defendants appeared and filed written statement contesting the suit raising preliminary objections that the defendants are in legal possession of the suit property being tenants of Major Mohinder Singh Sarkaria, the previous owner of the suit property and there is no relationship of licensor and licensee between the parties. On merits, the defendants submitted that Major Mohinder Singh Sarkaria had inducted the defendants as tenants in the suit property at the monthly rent of Rs.500/- and the defendants used to pay rent to him regularly. It being so, there was no question of defendants being allowed to reside in the room as licensee. The defendants admitted the correctness of the site-plan attached with the plaint and the assertion that the plaintiff had purchased the property. However, according to them, their tenancy rights are still intact and they have become tenants of plaintiff by operation of law. They further submitted that the plaintiff is intentionally not accepting the rent from the defendants. The defendants denied having received any written notice from the plaintiff. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

4. On the pleadings of the parties, following issues were

framed:

1. Whether the plaintiff is entitled for Mandatory injunction and permanent injunction as prayed for? OPP.
2. Whether plaintiff has no cause of action and locus standi to file the present suit? OPD.
3. Whether the plaintiff has not come to the court with clean hands and suppressed the material facts from the Court? OPD.
4. Whether suit is not legally maintainable? OPD.
5. Whether there is no relationship between licnesor and licensee? OPD.
6. Relief.

5. Both the parties led evidence in respect of their claims.

During the course of her evidence, the plaintiff examined PW1 Sh.Kamal Khurana, Deed Writer, the scribe of the sale deed dated 19.3.2013 executed by Major Mohinder Singh Sarkaria in favour of plaintiff. He proved certified copy of the sale deed being Ex.PW1/A.

The plaintiff further examined Sh.Arinder Singh, Civil Engineer & Draughtsman as PW2, who submitted his affidavit as Ex.PW2/A and proved site-plan as Ex.P1.

The next witness examined by the plaintiff was PW4 Sahib Kumar, Clerk, Office of Sub Registrar, Amritsar. She further examined Michael, Building Inspector, Municipal Corporation,

Amritsar as PW5, who proved on record site plan dated 22.8.2013 as Ex.PW5/A.

The husband of the plaintiff had stepped into the witness-box as PW6, who tendered in evidence his duly sworn affidavit as Ex.PW6/A.

The plaintiff got her own statement recorded as PW7 and tendered in evidence her duly sworn affidavit as Ex.PW7/A repeated on oath her case as given in the plaint proving on record site plan as Ex.P1, copy of jamabandi for the year 2006-2007 as Ex.P2, copy of order Ex.P3, certified copy of the sale deed as Ex.PW1/A, its endorsement as Ex.PW1/B, site plan Ex.PW5/A and receipt Mark 4.

In rebuttal, the defendants examined DW1 Nand Kishore(defendant No.1), who tendered in evidence his affidavit as Ex.DW1/A repeated on oath the case of the defendants as given in the written statement. He proved on record copy of bank passbook as Ex.D1, copy of death certificate of Sain Dass as Ex.D2, copy of ration card as Ex.D3, copy of scheduled caste certificate as Ex.D4, copies of 5th class certificate, marks sheet etc. Ex.D5, Ex.D6, Ex.D7, copy of Aadhar Card of defendant Nand Kishore as Ex.D8, copy of aadhar card of defendant Neelam as Ex.D9, copy of election identity card of Sain Dass Ex.D10, copy of election identity card of Nand Kishore Ex.D11, copy of election identity card of Neelam Ex.D12, copies of bank passbooks Ex.D13, Ex.D14, copy of power of attorney Ex.D15, certified copy of Will Ex.D16, copy of jamabandi for the year 1996-97 Ex.D17,

receipt Ex.D18, copy of ration card Ex.D19, property tax return receipt Ex.D20, copy of letter dated 24.6.2014 Ex.D21 and copy of election identity card Ex.D22.

DW2 Smt.Neelam, defendant No.2 through her affidavit Ex.DW2/A repeated on oath the case of the defendants as given in the written statement.

DW3 Sh.Rohit Gupta, Draughtsman proved on record site plan as Ex.DW3/1, photographs Ex.DW3/2 to Ex.DW3/10 and CD of photographs as Ex.DW3/11.

DW4 Smt.Sheela Rani tendered in evidence her duly sworn affidavit as Ex.DW4/A and proved on record copy of death certificate of Sai Dass as Ex.D1, copy of her aadhar card as Ex.D2, affidavit Ex.D3, original bank passbooks as Ex.D5 to Ex.D7, certified copy of Will as Ex.D8, certified copy of power of attorney as Ex.D9 and original receipt as Ex.D10.

DW5 Sh.Sawinder Pal, Manager, PNB, Kot Khalsa, Amritsar proved on record account opening form of Neelam and Nand Kishore Ex.DW5/1 and statement of account as Ex.DW5/2.

DW6 Sh.Manmeet Singh, Inspector, Food & Supply Department, Amritsar proved on record letters Mark A, Mark B and Mark C.

DW7 Sh.Paras Dhawan, Clerk, Sub Registrar Office, Amritsar proved on record certified copy of Will dated 25.9.2006 as Ex.D8 and certified copy of power of attorney dated 25.9.2006 as Ex.D9.

Since the defendants failed to conclude their evidence despite

availing of ample opportunities, it was closed vide Court order.

6. After hearing the learned counsel for the parties, the trial Court decided issue No.1 against the plaintiff, issue No.5 was also decided against the plaintiff, issues No.2 to 4 were decided as not proved. Resultantly, suit of the plaintiff was dismissed. This was so done vide judgment and decree dated 9.11.2017.

7. The plaintiff was aggrieved by the said judgment and decree and she had filed an appeal before the Court of District Judge, Amritsar, which was assigned to learned Additional District Judge, Amritsar, who vide judgment and decree dated 5.2.2019 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff granting relief of mandatory injunction and permanent injunction to the plaintiff directing the defendants to vacate and hand over the vacant possession of the room shown in red colour in the site plan forming part of House No.102, Satguru Ram Singh Colony, Kot Khalsa, Amritsar to the plaintiff within a period of three months from the date of judgment. The defendants were also restrained from effecting any kind of repair or parting with possession of the room to anybody except the plaintiff.

8. Now it was turn of the defendants to feel dissatisfied and they have filed the present regular second appeal before this Court. Notice was issued to respondent, who was served and has put in appearance through counsel.

9. I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

10. As far as judgment passed by the trial Court dismissing the suit of the plaintiff is concerned, it comes to be result of non-application of mind and inability to understand the legal and factual position. The evidence on record was not properly appreciated. Issues No.2 to 4 were disposed of as not proved without specifying as to in whose favour and again whom those were being decided. That judgment was rightly set aside by the First Appellate Court of Additional District Judge, Amritsar, whose judgment is quite detailed and well reasoned and result of proper appraisal of evidence and correct interpretation of law. The First Appellate Court has rightly come to the conclusion that the status of the defendants was that of licensee. For ready reference, the relevant portion of the judgment are being reproduced as under:

31. In the instant case on the analysis of the entire evidence on record, it is proved that plaintiff purchased the suit property from Major Mohinder Singh, vide sale deed dated 19.3.2013, certified copy of which is Ex.PW.1A. The plaintiff got the site plan Ex.PW.5/A sanctioned from the Municipal Corporation, Amritsar and raised the construction, as shown in the site plan Ex.PW.2/A. In para No.3 of the written statement the defendants have admitted that Major Mohinder Singh Sarkaria has sold the suit property to

the plaintiff but stated that tenancy rights of the tenant are still intact and they have become tenants of the plaintiff. Though the defendants have alleged themselves to be tenants under Mohinder Singh Sarkaria and thus, by operation of law under the plaintiff but the defendants have failed to produce or prove any documentary evidence in the shape of rent note, rent receipts etc. to prove their status as tenant in the suit property.

32. *Perusal of the record reveals that after framing of issues, the defendants moved an application under Section 151 CPC for amendment of the written statement, which was allowed by the learned trial Court vide order dated 23.2.2015 and the defendants filed their amended written statement, in which they pleaded that Harjit Singh Sarkaria son of Ajaib Singh Sarkaria had sold a plot bearing khasra No.467 Min, situated at Sat Guru Ram Singh Colony, Kot Khalsa, Tehsil and District Amritsar vide agreement dated 09.05.1985 to Sain Dass son of Udho Ram during the life of Sain Dass for a valuable consideration and after his death, Harjit Singh Sarkaria being aware of said fact gave power of attorney to the legal heirs of Sain Dass namely Sheela widow of Sain Dass, Chaman Lal, Ashok Kumar, Nand Kishore, Vinod Kumar and Ajay Kumar sons of Sain Dass giving them all the rights to alienate, transfer, mortgage, lease out, to sell and gift away the said property to any other person regarding the said property vide registered power of attorney dated 25.09.2006. Harjit Singh Sarkaria also executed his registered Will and executed the receipt*

on 25.09.2006 in favour of legal heirs of Sain Dass. The property in dispute under the occupation and possession of the defendants is presently bearing No. 102, which was carved out of the said area. However, against the said order dated 23.2.2015 passed by the trial Court, the plaintiff filed Civil Revision No.2132 of 2015 (O&M) in the Hon'ble Punjab and Haryana High Court, Chandigarh, which was allowed by the Hon'ble High Court vide order dated 30.8.2017 and the order dated 23.2.2015 was set aside. So, the amended written statement filed on 4.3.2015 cannot be taken into consideration and further the evidence led by the defendants on the basis of said pleadings that they are owners in possession over the suit property also cannot be taken into consideration being beyond pleadings.

33. *As the defendants have failed to lead any evidence to prove that they were in possession of the suit property as tenants of Major Mohinder Singh Sarkaria and plaintiff had purchased the suit property from Major Mohinder Singh Sarkaria vide sale deed dated 19.3.2013, therefore, mere stray admission made by PW.3 Lakhwinder Kaur in cross-examination that the defendants are not her licensee does not prove the version of the defendants that they were the tenants of Major Mohinder Singh in the suit property. The learned trial Court has rightly observed that plaintiff has proved on record that she has purchased the suit property from Major Mohinder Singh Sarkaria vide sale deed dated 19.3.2013 and has also rightly observed that the defendants in their earlier written*

statement have admitted the plaintiff to be owner of the suit property and that it was for the defendants to prove their status that under which capacity they are occupying the part of the suit property, shown red in the site plan Ex.P1 and they have not been able to prove their status as tenant or as owner over the disputed property but the findings of the learned trial Court that it does not ipso facto make them licensee because Mohinder Singh Sarkaria did not choose to depose in favour of plaintiff to prove that he allowed the defendants to reside in the suit property as licensee are erroneous. As the plaintiff has led the evidence to prove her case, therefore, only due to non-examination of Major Mohinder Singh Sarkaria by the plaintiff, her version cannot be disbelieved. In such a scenario the rulings referred by the learned counsel for the respondents are not applicable to the facts of the present case.

34. So, in view of the above discussion, there can be no other conclusion than to hold that defendants were in possession of the suit property as a licensee of Major Mohinder Singh Sarkaria and after the purchase of the said property by the plaintiff, vide sale deed dated 19.3.2013, the defendants were allowed to remain in possession by the plaintiff as a licensee on the request made by the defendants. Since, the defendants had refused to vacate the premises on the termination of the license by the plaintiff, therefore, the defendants have no right to remain in possession of the suit property or to make any repair over it or to part its possession to any person and suit is well maintainable. As such, the findings of

the learned trial Court on issues No.1 and 5 are reversed and it is held that defendants were licensee under the plaintiff by operation of law and after the revocation/termination of license they are bound to hand over the vacant possession of the disputed property to the plaintiff. As such, the plaintiff is entitled to the relief of mandatory injunction and permanent injunction. Thus, the points for determination No.1 and 2 are decided accordingly.

11. I do not find any reason to disagree with the learned Additional District Judge, Amritsar on any point. The defendants have failed to establish that they were inducted in the property as tenants by Major Mohinder Singh Sarkaria or that they had paid rent to him at any point of time or for that matter after sale of house by Major Mohinder Singh Sarkaria to the plaintiff, they had paid rent to the plaintiff at any stage. Their status cannot be taken to be that of tenants, rather it comes out that they have been in permissive possession of the room in the property in question and their status is that of licensee. After revocation of licence by the plaintiff, the defendants have no right to retain possession of the room and are liable to vacate the same. It seems that they are trying to prolong their possession by one way or other so as to deny the plaintiff enjoyment of room of the house belonging to her. Such type of tactics cannot be allowed to succeed. They are liable to vacate the room and hand over the vacant possession to the plaintiff.

12. I do not find any merit in the present appeal and do not see

any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Amritsar.

13. The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application, if any stands disposed of accordingly.

2.12.2022

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No