

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

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RSA-1437-2022 (O&M)
Date of decision: 29.11.2022

Subhash

.....Appellant

Versus

Raj Kumar and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sube S. Kaushik, Advocate for the appellant.

MANJARI NEHRU KAUL, J. (ORAL)

Suit was filed by the respondents/plaintiffs seeking decree of mandatory injunction to direct the appellant/defendant to hand over vacant possession of the suit property (as detailed in para 1 of the judgment and decree dated 16.03.2019 passed by the Trial Court) with a further prayer to pay for usage and occupation charges/mesne profits @ Rs.7,000/- per month for each Kotha, till handing over its vacant possession. The Trial Court vide judgment and decree dated 16.03.2019 decreed the suit of the plaintiffs. Appeal preferred by the appellant/defendant against the judgment and decree of the Trial Court was dismissed by the Lower Appellate Court vide order dated 31.05.2022. The appellant/defendant is now before this Court in Regular Second Appeal.

Parties to the *lis* hereinafter shall be referred to by their original positions in the suit.

The pleaded case of the plaintiffs may be noticed as thus.
The plaintiffs along with Prem Chand and Radhe Shyam are owners of the suit property. In the year 2000, father of defendant, namely Risala,

was employed as a chowkidar on a monthly salary of Rs.1,000/- by the plaintiffs. From the year 2004 onwards said Risala was permitted to stay in the suit property i.e. Kothas as he found it difficult to commute daily from his village on account of his old age. Risala died in the year 2005 and thereafter, on the request of the defendant, the latter was employed as a chowkidar by the plaintiffs, on a monthly salary of Rs.1,500/-. The defendant along with his family after obtaining permission of the plaintiffs, continued to live in the suit property and also use the tubewell which was installed there. However, in the month of July, 2016, the plaintiffs learnt from their neighbours that the defendant and his family were indulging in illegal activities in the suit property. Resultantly, the defendant and his family were asked not only to vacate the suit property but even his services as chowkidar were terminated by the plaintiffs. It was claimed by the plaintiffs that the status of the defendant and his family was one of a licensee and licence of the defendant stood verbally terminated after he was removed as chowkidar by the plaintiffs in the month of July 2016. Still further, it was averred that since the defendant refused to vacate the suit property after the termination of his licence and in spite of the oral requests by the plaintiffs, the former was also liable to pay usage and occupation charges to the latter, in addition to handing back the possession of the suit property to the plaintiffs.

On being put to notice, the defendant denied the pleaded case of the plaintiffs. It was averred that his father had been engaged more than 60 years back to look after the suit property by the ancestors of the plaintiffs. The father of the defendant had performed his duties

honestly and on account of services rendered by him, the previous owner of the property had given suit property for residence to their father Risala and his family. Hence, Risala had become owner of the suit property, and after his death, the defendant had stepped into his shoes as owner. Ever since then it was being used by the defendant and his family for his residence. The defendant denied being in unauthorized occupation of the suit property and it was rather submitted that the status of the defendant was one of an owner and not a licensee hence the question of termination of licence of the defendant did not arise much less making the payment to the plaintiffs towards usage and occupation charges.

Both the Courts below, on the basis of material and other evidence led, decreed the suit of the plaintiffs for mandatory injunction on the ground that no right or title could have been said to accrue to the defendant in the suit property merely because he was employed as a chowkidar by the plaintiffs and allowed to reside therein. The defendant was also directed to hand over vacant possession of the suit property to the plaintiffs. Besides this, the Courts below assessed the mesne profit payable by the defendant to the plaintiffs towards usage and occupation of the suit property at the rate of Rs.3,000/- per month for both the kothas i.e. suit property.

Learned counsel appearing on behalf of the defendant vehemently argued that both the Courts below failed to appreciate the evidence led and material placed on record in the right perspective. Learned counsel submitted that defendant had been in possession of the suit property since the year 2005 after the death of his father, who had

been residing on the suit property for the last 60 years prior thereto.

Learned counsel submitted that, therefore, the onus was upon the plaintiffs to prove that they were owners and the defendant was a licensee on the suit property. However, both the Courts below failed to appreciate that no evidence in the said regard was led by the plaintiffs.

Learned counsel further submitted that it was evident from the jamabandi (Ex.P3) that the plaintiffs are not in possession of the suit property, therefore, suit for mandatory injunction filed by the plaintiffs was not even maintainable. It was still further submitted that the Courts below had gravely erred in assessing the rent of both the kothas in the sum of Rs.3,000/- per month, even though the structure of the said kothas was made with mud and hence had no rental value. It was lastly argued by the learned counsel that in fact it was a case of adverse possession which was erroneously overlooked by the Courts below while decreeing the suit of the plaintiffs.

I have heard learned counsel and perused the relevant material on record.

This Court finds no merit in the submissions made by the learned counsel that no evidence was led by the plaintiffs qua the defendant being a licensee on the suit property. A perusal of the material on record reveals that it is the admitted case of the defendant himself that originally his father had been engaged as a chowkidar to look after the suit property and had been allowed to reside in the same during the course of his employment with the plaintiffs. Still further, admittedly there was no document in the possession of the defendant

with respect to his ownership of the suit property. It is pertinent to notice that the ownership of the plaintiffs on the suit property stands recorded and thus fully proved from the revenue records exhibited as Ex.P2 and P3. Therefore, in the circumstances, the only inference which can be safely drawn from the material on record including the admission on the part of the defendant himself, that the status of the defendant on the suit property was one of a licensee. Therefore, the defendant, in the above circumstances, could not have been said to have acquired any right or title in the suit property once the licence stood terminated by the owners of the property vide legal notice Ex.P2.

On being pointedly asked, learned counsel for the defendant failed to bring to the notice of this Court anything on record to show that the conclusions arrived at by both the Courts below were either contrary to record or suffered from any material illegality.

As a sequel to the above, this Court thus does not find any error in the concurrent findings recorded by the Courts below. Accordingly, the instant appeal being devoid of any merit is dismissed.

29.11.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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