

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

101

**RSA-1616-2021 (O&M)
Decided on : 07.05.2022**

Balwinder Singh and another

. . . Appellant(s)

Versus

Manjit Singh and another

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Shailendra Sharma, Advocate
for the appellant(s).

Ms. Ekta Thakur, Advocate
for caveator/respondent No.1.

MANJARI NEHRU KAUL, J. (Oral)

The instant Regular Second Appeal has been preferred by the appellant (defendant before the trial Court) to assail the concurrent findings recorded by the Courts below, in a suit filed by the respondent (plaintiff before the trial Court), for mandatory injunction, wherein, he sought directions to the appellant to put him in possession of the main ground floor portion of House No. 47, Sector 10-A, Chandigarh (hereinafter referred to as the 'suit property'), and also, for rendition of accounts.

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

The pleaded case of the plaintiff in a nutshell may be noticed as thus:-

He was owner and landlord of House No. 47, Sector 10-A, Chandigarh. He was unable to manage the suit property, after the death of his grandmother Gurbachan Kaur, who was the original owner and landlady

and from whom, he had succeeded to the suit property. The defendants had been entrusted the suit property by the plaintiff merely as caretakers w.e.f. March, 2005, on the condition that they would reside on the ground floor of the suit property, while the top floor, ground and first floor of the annexee of the suit property, would be rented out by them to different persons, for and on behalf of the plaintiff. The monthly rent collected from the tenants by the defendants was to be paid to the plaintiff. It was also agreed upon that in case of any litigation in respect of the suit property, it would be contested by the defendants through an Advocate, who would be engaged by and through a friend, Amar Singh Chahal, Advocate. A suit for ejectment titled as, “Jagtar Singh Vs. Balwinder Singh”, in respect of the suit property was instituted against the defendant No.1. In the said suit, the defendant No.1 – Balwinder Singh, in his written statement asserted that late Gurbachan Kaur i.e. grandmother of the plaintiff herein, had neither inducted him as a tenant in the suit property nor had he ever seen her at any point in time, hence, the question of paying any rent to her did not arise. It was also submitted by the defendant No.1 – Balwinder Singh, that litigation was instituted by one Darbara Singh and others against Gurbachan Kaur *qua* the house in question. After the death of Gurbachan Kaur, during the pendency of the aforementioned litigation, the plaintiff became a party to the litigation on the basis of a Will claiming himself to be the only legal heir of Gurbachan Kaur to succeed to the house in question. It was also claimed that the defendant No.1 – Balwinder Singh, had been taking care of both the litigations and the house in question, on behalf of the plaintiff only in the capacity of a caretaker. The said case came to be ultimately dismissed. On account of the averments made and the stand taken by the defendant No.1 – Balwinder Singh, in the aforementioned civil suit, he was estopped by his

own act and conduct to disclaim the right of the plaintiff, who owned, possessed and was managing the house in question as legal heir of his late grandmother Gurbachan Kaur. The defendants also failed to account for the money received by them from different tenants despite the repeated requests of the plaintiff as well as meetings between the defendants as well as the plaintiff on two different occasions. In the year 2014, the defendants told the plaintiff that they were contesting a suit filed by one Jagtar Singh and hence, they were not liable to pay anything to the plaintiff *qua* the house in question and even an amount in the sum of Rs.75,000/-, which had been given earlier by them to the plaintiff, had been wrongly given and as such, was liable to be refunded back to him. The plaintiff in the meantime came across a copy of the written statement filed by defendant No.1 in the case titled as, “Jagtar Singh Vs. Balwinder Singh”, wherein, defendant No.1 had asserted that both the plaintiff and Amar Singh Chahal, Advocate, were strangers to him. Thus, in view of the aforesaid stand taken by defendant No.1, coupled with the fact that the defendants had been misappropriating the rent collected by them from different tenants on behalf of the plaintiff, it was pleaded that the defendants had forfeited their right to reside in the suit property as licensees/caretakers.

It was in the above background that the suit in question came to be instituted by the plaintiff, wherein, the following twofold prayer was made:-

- (i) Suit for mandatory injunction, as the defendants were unauthorized occupants of the house in question.
- (ii) Plaintiff was entitled to seek a decree of rendition of accounts in respect of rent collected by the defendants from different tenants, who had been living in the house

in question.

On being put to notice, the defendants filed their written statement and denied the averments made by the plaintiff in his plaint. It was asserted that the plaintiff was neither the owner of the house in question nor had the defendants been kept as caretakers of the said house. The defendants categorically denied that Gurbachan Kaur i.e. grandmother of the plaintiff was the owner of the house in dispute. Rather, it was alleged that the plaintiff was an imposter, who was desperately trying to get possession of the house in dispute by projecting himself as its owner. The defendants also raised a preliminary objection that the suit in question deserved to be dismissed on account of non-compliance of Order 7 Rule 11(J) of CPC.

On the basis of the pleadings and evidence led, the learned trial Court partly decreed the suit vide judgment and decree dated 30.03.2019, by directing the defendants to put the plaintiff in possession of the demised premises i.e. ground floor of the house in question. Besides this, the trial Court also held the plaintiff entitled for use and occupation charges/damages @ Rs.75,000/- p.m. w.e.f. 01.03.2013 till the filing of the suit. The plaintiff was, however, not held entitled to the relief of rendition of accounts.

The learned lower Appellate Court vide judgment and decree dated 22.11.2021, affirmed the findings recorded by the trial Court. However, it modified the judgment and decree passed by the trial Court that the defendants shall pay use and occupation charges @ Rs.75,000/- p.m. along with interest @ 5% from 01.03.2013 till the possession of the suit property was delivered to the plaintiff.

Learned counsel for the defendants submits that though the

plaintiff claimed himself to be the owner and landlord of the house in question, however, there was nothing on record to prove his ownership *qua* the said house on the date, when the suit in question was instituted. Learned counsel vehemently contends that though the plaintiff was claiming ownership of the house in question on the basis of a Will of his late grandmother Gurbachan Kaur, however, he had not even placed on record any copy of the said Will. He further submits that the judgment and decree dated 22.11.2018, vide which the plaintiff was declared as co-owner of the house, was passed in the year 2018 i.e. subsequent to the filing of the present suit. Therefore, the proprietary rights of the plaintiff came into effect only on 22.11.2018 and the same could not have any retrospective effect. Furthermore, learned counsel submits that plaintiff was one of the many legal heirs of late Gurbachan Kaur and hence, the suit instituted by him was not maintainable, as the other legal heirs being necessary parties were not even impleaded by the plaintiff. Learned counsel submits that an application moved by the plaintiff for recording him as the owner of the house in question in the Estate Office records, was dismissed, after which he preferred an appeal before the Chief Administrator, which also was dismissed vide order Ex.PW7/9. Not only this, even the revision against the order of the Chief Administrator (Ex.PW7/9) was dismissed by the Adviser to the Administrator, UT, Chandigarh vide order (Ex.PW7/11). He, thus, submits that the petitioner was neither able to prove that the defendant had been inducted by him as a caretaker nor was the plaintiff able to prove by way of any cogent evidence that there existed a licensor-licensee relationship between them. Learned counsel still further submits that the plaintiff had even failed to comply with the mandatory provisions of Section 106 of the Transfer of Property Act, as admittedly, no notice was served

upon the defendants prior to the filing of the suit in question. While concluding his submissions, learned counsel urges that once the plaintiff had failed to prove his ownership *qua* the house in question, after the death of Gurbachan Kaur, he could not seek possession of the suit property, more so, when their relationship of licensor-licensee had been specifically denied by the defendants. In support of his submissions, learned counsel has placed reliance upon ***Anathula Sudhakar Vs. P. Buchi Reddy and others, 2008(2) RCR 879*** and ***Billo Vs. Nagar Palika Parishad and another, 2021 (3) Civil Court Cases 194.***

Still further, learned counsel further submits that neither was there any positive evidence brought on record that the market rent of the ground floor of the house in Sector 10, Chandigarh, was Rs.75,000/- p.m. and hence, the Courts below gravely erred in assessing the mesne profit in the sum of Rs.75,000/- p.m.

Per contra learned counsel for the respondent-caveator, while vehemently opposing the submissions made by the counsel opposite, submits that plaintiff being a legal heir of late Gurbachan Kaur, inherited her properties including the suit property, after her death, thus, no dispute could be raised by the defendants *qua* the ownership of the plaintiff over the suit property. Learned counsel submits that since the defendant No.1 had admitted to the ownership of the plaintiff over the suit property in the written statement filed by him in case titled as, “Jagtar Singh Vs. Balwinder Singh”, the defendants were now estopped from disputing the title of the plaintiff. She further submits that the relationship between the parties stood duly proved from the deposition of not only the plaintiff, but it also found due corroboration from the testimony of PW-Amar Singh Chahal.

I have heard learned counsel for the parties and perused the

relevant material on record.

It would be pertinent to notice that the defendants have not disputed that late Gurbachan Kaur, was the owner of the suit property and still further, she was the grandmother of the plaintiff. Though, it was argued by the learned counsel for the defendants that since there were several other legal heirs of late Gurbachan Kaur, the plaintiff could not claim himself to be the owner of the suit property, on the date of the institution of the suit and the judgment and decree Ex.PZ/1, dated 12.11.2018, vide which the plaintiff was declared a co-owner to the extent of 1/3rd share in the house in dispute, was passed much after the institution of the present suit. However, the aforesaid plea raised by the defendants is in contravention to the fundamental principles of succession and deserves to be rejected out-rightly.

The plaintiff, as per the law of intestate succession is the son of the predeceased son of late Gurbachan Kaur, therefore, being her class-1 legal heir, he inherited her properties after her death along with the other legal heirs, as per the provisions of Section 15(1)(a) of the Hindu Succession Act.

It is a fundamental principle of law of succession that inheritance never remains in abeyance. The right of succession would pass on to the next legal heir immediately upon the death of the owner of a property, as no property can remain ownerless. Thus, it would be contrary to the principles of inheritance to say that the plaintiff was not the owner of the house in question, when the suit was instituted.

The contention of the learned counsel for the defendants that since there were other legal heirs of late Gurbachan Kaur, who were co-sharers of the house in question, the plaintiff could not claim possession

without impleading them as parties in the suit, is devoid of any merit.

The Hon'ble Supreme Court in ***Mohinder Prasad Jain Vs. Manohar Lal Jain, 2006(2) RCR (Civil) 36*** and ***India Umbrella Manufacturing Co. Vs. Bhagabanbei, 2004(1) RCR (Civil), 686***, has held that even a co-owner can seek eviction and claim possession of the property from a person, who has no authority to continue in possession of a property. Such co-owner, does so on his own behalf, in his own right and as an agent of the other co-owners. The consent of the other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable and despite that a suit was filed.

Still further, the relationship of licensor and licensee was duly proved by the plaintiff while deposing as PW-5, which was corroborated by the testimony of PW-6 – Amar Singh Chahal, Advocate. They both were subjected to a lengthy and searching cross-examination by the defendants, however, they failed to create any dent in the case of the plaintiff. The defendant No.3 while stepping into the witness-box, failed to disclose material facts *qua* the alleged tenancy and therefore, in the absence of any oral or documentary material, the defendants miserably failed to prove that they were tenants in the suit property.

The Hon'ble Supreme Court in ***Maria Margarida Sequeria Fernandes and others Vs. Erasmo Jack de Sequeria (Dead) through LRs. and others 2012(2) RCR (Civil) 441***, has held that a caretaker, watchman or a servant can never acquire interest in a property irrespective of his/her long possession over it. The caretaker or a servant, as the case may be, has to hand-over possession to the owner forthwith on demand. The Supreme Court further went on to hold that the Courts would not be justified in protecting the possession of a caretaker or a servant or any other person,

who may have been allowed to live in a property by the owner for some time. The protection of a Court can only be to a person, who has a valid and subsisting rent, lease or license agreement in his favour.

Lastly, keeping in view the nature of the relationship between the parties, this Court has no hesitation in observing that Section 106 of the Transfer of Property Act, is not applicable to the case in hand. The plaintiff was under no legal obligation to serve a notice upon the defendants before instituting the suit in question.

The judgments relied upon by the learned counsel for the appellants/defendants would not come to his rescue, as the facts and legal issues involved therein, are different from the case in hand.

Upon being pointedly asked, learned counsel for the appellant/defendant failed to refer to anything on record to show that the conclusions arrived at by the Courts below were either contrary to the record or suffered from any material illegality. The appeal, being devoid of merit, is accordingly dismissed. The judgments and decrees of the Courts below are affirmed.

(MANJARI NEHRU KAUL)
JUDGE

May 07, 2022

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No