

105 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-3376-2018
Decided on:-21.09.2022

Sangeeta Bakshi and others

....Appellants...

vs.

Y.R. Aggarwal and ors.

....Respondents.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Keshav Partap Singh, Advocate,
for the appellants.

HARKESH MANUJA J. (Oral)

In the present appeal, the appellants have challenged the judgment and decree dated 10.03.2017 passed by the Court of learned Additional District Judge, Faridabad, whereby the judgment and decree dated 30.04.2016 passed by the court of Civil Judge (Junior Division), Faridabad, has been reversed and a suit for possession by way of mandatory injunction, filed at the instance of respondents No.1 to 3-plaintiffs has been decreed.

2. The facts leading to the present case are that respondents No.1 to 3-plaintiffs filed a suit for mandatory injunction along with prayer for permanent injunction stating therein that they had purchased the suit property i.e. House No.681, Sector 21-B, vide registered sale deed dated 08.06.2011 from respondent No.4 herein. It was further submitted that at the time of execution of sale deed, the possession of first and second floor was handed over to the respondents-plaintiffs, whereas the appellants remained in occupation of the ground floor as licensee. As per the plaint, the

possession of ground floor was retained by the present appellants as licensee, with the promise that they shall vacate the same within a period of 4/5 months, as they were looking for rented accommodation for their own. It has been further submitted that despite repeated requests, the appellants did not hand over the possession of the ground floor, hence, a suit for mandatory injunction as well as permanent injunction was filed.

3. On notice, the appellants being defendants No.1 to 4 filed their written statement stated therein that respondent No.4 herein had no right to sell the property in question to respondents No.1 to 3. It has been further submitted that in a family partition, the property in question fell into the share of late Ajay Bakshi (husband of appellant No.1).

4. The learned trial court, vide its judgment and decree dated 30.04.2016, dismissed the suit holding that the same was not maintainable in the present form. It was held that respondents No.1 to 3 being owners were required to file suit for possession based on title being an efficacious remedy available to them rather than file a suit for mandatory injunction. Aggrieved against the judgment and decree dated 30.04.2016, respondents No.1 to 3 filed their first appeal before the court of learned Additional District Judge, Faridabad. The First Appellate Court vide its judgment and decree dated 10.03.2017, has allowed the appeal filed at the instance of respondents No.1 to 3, holding that once, the appellants have not been able to establish their right, title or interest over the suit property through their predecessor-in-interest late Mr.Ajay Bakshi, as such, their status remained as licensee and the suit for mandatory injunction could have been entertained having been filed at the instance of original owner. The learned First Appellate Court has also directed respondents No.1 to 3 to pay the

requisite ad valorem court fee within a period of one month from the date of passing its judgment and decree, as a condition precedent. It is the aforesaid judgment and decree dated 10.03.2017, which has been challenged by way of present appeal.

5. It has been contended on behalf of learned counsel for the appellants that though respondents No.1 to 3 have been proved to be owners of the suit property, still remedy of filing a suit for possession was available to them instead of filing a suit for mandatory injunction which was not even maintainable. He further submitted that the learned first appellate court committed an error of law while reversing a well-reasoned judgment and decree passed by the learned trial court.

6. Having heard learned counsel for the appellants and having gone through the records, I find no legal infirmity in the judgment and decree passed by the learned first appellate court. It has been concurrently held by the courts below that respondents No.1 to 3 i.e. the plaintiffs purchased the suit property from respondent No.4 herein (defendant No.5) vide a registered sale deed dated 08.06.2011 and thus, were owners of the same. Moreover, the appellants herein have failed to prove any right, title or interest in the suit property through their predecessor-in-interest, late Mr. Ajay Bakshi and therefore, their status can at best be treated as licensee in the premisses in question.

7. More than that, there is no inordinate delay on the part of respondents No.1 to 3 in seeking possession of the suit property by way of filing a suit for mandatory injunction being the owners. As the suit for mandatory injunction has been filed promptly by respondents No.1 to 3, no fault can be found with the reasoning recorded by the learned First

Appellate Court.

8. In sum and substance, in case, a licensor does not want his licensee to remain in occupation of the premises, he can always seek possession by filing a suit for mandatory injunction. The only caveat to this is that the owner has to file the suit for possession with promptitude i.e. within reasonable time. I derive my aforesaid view from the judgment passed by Hon'ble the Supreme Court in case of **“Joseph Severance and others vs. Benny Mathew and others”**, 2005 (4) RCR (Civil) 559. Relevant portion from para 7 of the aforesaid judgment is reproduced herein under:-

“.....Strictly speaking the question is not a substantial question of law, but one whose adjudication would depend upon factual adjudication of the issue relating to reasonableness of time. The correct position in law is that the licensee may be the actual occupant but the licensor is the person having control or possession of the property through his licensee even after the termination of the licence. Licensee may have to continue to be in occupation of the premises for sometime to wind up the business, if any. In such a case licensee cannot be treated as a trespasser. It would depend upon the facts of the particular case. But there may be cases where after termination or revocation of the licence the licensor does not take prompt action to evict licensee from the premises. In such an event the ex-licensee may be treated as a trespasser and the licensee will have to sue for recovery of possession. There can be no doubt that there is a need for the licensor to be vigilant. A licensee's occupation does not become hostile possession or the possession of a trespasser the moment the licence comes to an end. The licensor has

to file the suit with promptitude and if it is shown that within reasonable time a suit for mandatory injunction has been filed with a prayer to direct the licensee to vacate the premises the suit will be maintainable.....”

9. In the facts and circumstances of the present case, it is apparent that the suit for mandatory injunction was filed by respondents No.1 to 3 within a reasonable time. The property was purchased by respondents No.1 to 3 vide registered sale deed dated 08.06.2011. As per the pleadings, appellants sought 4-5 months time to vacate the premises in dispute so as to make their alternate arrangements. However, once, the appellants did not vacate the premises, the suit was promptly filed by respondents No.1 to 3 on 10.10.2013. In the facts and circumstances of the present case, the time period taken by respondents No.1 to 3 in filing the suit for mandatory injunction appears to be reasonable. Moreover, no other point has been argued in the present appeal.

10. Be that as it may, the learned first appellate court has also directed respondents No.1 to 3/plaintiffs to make payment of requisite ad valorem court fee, as a condition precedent of the passing of its judgment and decree.

11. Finding no substantial question of law involved in the present appeal and for the reasons recorded herein above, I do not find any merit in the present appeal and the same is accordingly, dismissed.

(HARKESH MANUJA)
JUDGE

21.09.2022
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No