

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

RSA-1387-2019(O&M)

Reserved on:-12.4.2023

Date of Pronouncement:-17.4.2023

Jot Singh

...Appellant

Versus

Jogender Singh and another

...Respondents

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

Present: Mr.Ajit Singh, Advocate for
Mr.Arun Sharma, Advocate
for the appellant.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Jogender Singh had brought a suit against defendants Jot Ram and Rohtash both sons of Chaturbhuj son of Bishamber Dayal, residents of Singhan Panna, Tehsil Charkhi Dadri, District Bhiwani, seeking possession of pucca shop, fully described in the head-note of the plaint besides claiming compensation of Rs.2,64,000/- for use and occupation of the shop.

2. As per the version of the plaintiff, he had mortgaged the shop in dispute with defendant No.2 Rohtash for a sum of Rs.10,000/-, however it was got redeemed on 27.1.2005; defendant No.2 Rohtash had wrongly handed over possession of that shop to his real brother Jot Ram defendant No.1 without permission of the plaintiff, as such defendant No.1 is in

illegal possession of the shop; the electricity connection in the shop was in the name of Om Parkash, father of the plaintiff but since defendant No.1 did not pay the electricity bills, the electric supply was disconnected by the Electricity Department.

As per the case of the plaintiff, defendant No.1 is in illegal use and occupation of the shop in question since 28.1.2005 and prevalent rate of rent for such type of shops in the market is Rs.5,500/- per month, therefore, the plaintiff is entitled to get such amount from the defendant No.1; though defendant No.1 is using the shop since 28.1.2005 but the plaintiff claimed the amount for three years before filing of the suit. The plaintiff further contended that he is an unemployed young person having no other shop except the shop in question, therefore, he requires it for starting his business. The plaintiff called upon the defendant No.1 to vacate the shop several times but to no effect, as such, he filed the suit in the Court of law.

3. On getting notice, the defendant No.1 put in appearance and filed written statement contesting the suit, whereas defendant No.2 did not appear despite service, as such was proceeded against ex-parte.

In the written statement filed by defendant No.1, he had taken up preliminary objections challenging locus standi of the plaintiff to bring the suit as well as maintainability of the suit etc. On merits, he claimed to be in possession of the shop as a tenant since the year 1992, therefore according to answering defendant, provisions of Haryana Control of Rent and Eviction Act, 1973 are applicable and suit for possession so filed by the plaintiff is not maintainable. The answering defendant denied that the

shop in dispute was mortgaged by plaintiff with defendant No.2 or that such mortgage was redeemed. He further denied that defendant No.2 had transferred the possession of the shop to him. As the version of the answering defendant goes, the plaintiff had tried to dispossess him from the shop in question earlier, as such he had filed Civil Suit No.122 of 2006 against the plaintiff and obtained an injunction order. Refuting the remaining assertions, such defendant prayed for dismissal of the suit.

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

1. Whether the plaintiff is entitled to decree for possession from the defendant with regard to the suit land as prayed for? OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
3. Whether the civil Court has no jurisdiction to try and entertain the present suit? OPD.
4. Relief.
5. The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

During the course of evidence of the plaintiff, the plaintiff got his statement recorded as PW7 besides examining Ram Niwas as PW1, Hari Parkash as PW2, Narender Singh Yadav, Draughtsman as PW3, Satyawan, Registry Clerk as PW4, Dayanand, Deed Writer as PW5, Jagdish Sharma, Clerk as PW6. The plaintiff also tendered in evidence certain documents.

In rebuttal the defendant No.1 Jot Ram appeared as DW1 and

the defendants further examined Gulshan Kumar as DW2.

6. After hearing learned counsel for the parties, the trial Court of Civil Judge(Jr.Divn.), Charkhi Dadri gave issue-wise findings and vide judgment and decree dated 29.7.2015 decreed the suit of the plaintiff ordering eviction of defendant No.1 from the shop in question and directing the defendant No.1 to hand over the vacant possession thereof to the plaintiff within one month from the date of passing of judgment. The said defendant was also directed to pay an amount of Rs.2,64,000/- to the plaintiff on account of use and occupation of the shop in dispute with interest @ 9% per annum on this amount from the date of filing of the suit till actual realization.

7. Feeling aggrieved by the said judgment and decree, the defendant No.1 had filed an appeal, which was heard and disposed of by Additional District Judge, Charkhi Dadri vide judgment and decree dated 30.11.2018 inasmuch as the appeal was allowed partly holding that defendant No.1/appellant shall pay an amount of Rs.5,400/- per year to the plaintiff for a period of 36 months immediately from the filing of the suit and thereafter from the date of filing of the suit till possession is handed over by the defendant/appellant to the plaintiff. In that manner, the amount of compensation awarded by the trial Court as mesne profit was reduced.

8. Still feeling dissatisfied, the defendant No.1 has knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit be dismissed.

9. Initially the respondents put in appearance through counsel, however later on there was no representation on their behalf.

10. Since the case is quite old, therefore I proceed to decide it after hearing learned counsel for the appellant and going through the record.

11. In this case, both the Courts below in view of the pleadings of the parties, the evidence adduced by them on record and keeping in view the legal position on the subject, have returned concurrent findings that the defendant No.1 is in unauthorized possession of the shop in dispute belonging to the plaintiff. The version set up by the defendant No.1 that he has been in possession of the shop as a tenant was taken to be not established on account of inability of defendant to bring on record sufficient cogent and convincing evidence in that regard. The plea of the defendant No.1 that civil suit was not maintainable was considered and rejected for the reason that since there was no relationship of landlord and tenant between the parties and possession of defendants being unauthorized, the plaintiff was very much entitled to file a suit for possession against the defendants so as to get the shop in dispute vacated and recover possession. Similarly, the Courts below have found the plaintiff entitled to recover compensation/mesne profits from the defendant on account of use and occupation for a period of last three years before filing of the suit on account bar of limitation. Though the trial Court had granted compensation/mesne profits to the plaintiff to the tune of Rs.2,64,000/- as claimed in the plaint but the First Appellate Court in its wisdom has reduced the same. The respondent/plaintiff has not come

in appeal against that part of the judgment. However, as far as the impugned judgments and decrees passed by the Courts below are concerned finding the plaintiff entitled to decree for possession from the defendant and mesne profits, those are well reasoned, based on proper appraisal of evidence and correct interpretation of law do not call for any interference by this Court.

12. No substantial question of law or fact arises in this appeal.

13. The appeal stands dismissed with costs accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

17.4.2023

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**