

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.1386 of 2023 (O&M)
DATE OF DECISION : 12th MAY, 2023

Rajinder Kaur alias Rajjo

.... Appellants

Versus

Hira Lal Garg

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. P.K.S. Phoolka, Advocate for the applicant-appellant.

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RAJBIR SEHRAWAT, J. (Oral)

CM-5173-C-2023

This is an application for condonation of delay of 58 days in re-filing the present appeal.

For reasons mentioned in the application the same is allowed as prayed for and delay of 58 days in re-filing the present appeal is condoned.

CM-5174-C-2023

This is an application filed by the petitioner under Section 151 CPC for exemption from filing the true typed/certified/legible copies of judgments and decrees dated 27.11.2020 & 01.02.2023 passed by the courts below along with the grounds of appeal.

The application is allowed as prayed for.

RSA No.1386 of 2023

1. This is the regular second appeal filed by the appellant/defendant challenging the judgment and decree passed by the

lower appellate court whereby the judgment and decree passed by the trial court dismissing the suit for possession filed by the respondent/plaintiff, has been reversed and the said suit has been ordered to be decreed.

2. For the purpose of the present appeal, the parties would be referred to as they were described in the original suit.

3. The brief facts, as available on the file are that the plaintiff filed a suit for possession of the house measuring 150 Square Yards, i.e., 3 biswas, 3/53 share of plot measuring 02 bighas 13 Biswas comprising in Khewat No.1660, Khatauni No.8920 Khasra Nos. 4931 min (1-13½) 4931 min (0-10½) 4931 min (0-9). The plaintiff asserted therein that the house in question was purchased by him vide a sale deed. Further, the house in question was owned by Mohammad Islam. However, Mohammad Islam mortgaged the said house with plaintiff vide mortgage deed No.6683 dated 23.12.2013 for ₹1,00,000/-. Later on Mohammad Islam sold the house in question to the plaintiff vide sale deed No.1293 dated 26.05.2015 with physical possession. Since then the plaintiff had been in possession of the house. The defendant, being a widow requested the plaintiff to allow her to stay on the first floor of the house in question for few months; on the assurance that she was searching for another house for living and that she will vacate the house after getting another accommodation. She also agreed to compensate the plaintiff in monetary terms with ₹6,000/- per month. Accordingly, she was put in possession of the first floor of the house and the remaining portion was lying locked under the key and control of the plaintiff. The son of the plaintiff was seriously ill and was suffering from cancer, therefore, the plaintiff was

busy in getting his son treated from Bathinda and thereafter from PGI, Chandigarh. The defendant took advantage of absence of the plaintiff and broke open the locks of ground floor of the house and took illegal possession of ground floor and of the remaining portion of the house in question; as well. On being requested by the plaintiff to handover the vacant possession, instead of vacating the house the defendant started threatening the plaintiff with transfer of possession in the name of some third person. Accordingly, the suit was filed claiming possession, as well as; recovery of mesne profits @ ₹6000/- from the date of filing of the suit till the delivery of the possession of the same to the plaintiff.

4. On being put to notice the defendant appeared through the counsel, however, chose not to file any written statement. In the evidence the plaintiff examined PW-1 Kulvir Singh, the Registry Clerk of office of Sub-Registrar, who proved the sale deed Exhibits P-1 & P-2 in favour of the plaintiff. PW-2 Jagdish Singh, was examined qua the details and title of the property. PW-3 Sham Lal was examined to prove the assertions made in the plaint qua temporary handing over the possession of the property to the defendant. The plaintiff himself appeared as PW-4. However, no evidence was led by the defendant.

5. After assessing the material on record the trial court came to the conclusion that the plaintiff had proved his ownership. However, since the issue of defendant being licensee was not proved and there were assertions qua payment of money in lieu of use of house, therefore, the matter should be taken as involving the issue of tenancy, therefore instead of filing suit for possession, the plaintiff had to avail the appropriate remedy under the concerned Rent Act. Accordingly, the suit

filed by the plaintiff was dismissed. Aggrieved against the same the plaintiff filed appeal before the lower appellate court. The lower appellate court has reversed the judgment and decree passed by the trial court and has decreed the suit filed by the plaintiff; ordering the defendant to handover the vacant possession along with mesne profits @ 1000/- per month from the date of filing of the suit till delivery of possession of the property. Challenging the said judgment and decree passed by the lower appellate court the present appeal has been filed by the defendant of the original suit.

6. Arguing the case learned counsel for the defendant has submitted that the court below has gone totally wrong in reversing the well reasoned judgment and decree passed by the trial court. Since the plaintiff had not even asserted the defendant to be a licensee and there was assertion by the plaintiff that defendant was to pay ₹6,000/- per month as rent, therefore, the appropriate remedy of filing eviction petition before the Rent Controller should have been availed by the plaintiff. The suit for possession was not maintainable because the jurisdiction of the civil court is excluded under the East Punjab Urban Rent Restriction Act, 1949. The lower appellate court has wrongly read a license in favour of the defendant having been conferred by the plaintiff. This assessment by the court below is beyond even the pleadings of the plaintiff. The counsel has further submitted that, in fact, the defendant has gone totally unheard in the matter because of fault of the counsel. Hence, the defendant-appellant should have been granted fair hearing by the court below. The judgment and decree deserve to be set aside.

7. Having heard the counsel for the appellant and having perused the case file this court does not find any substance in the arguments raised by the counsel for the appellant. It is not even in dispute that the categorical assertion of the plaintiff in the suit has been that the defendant was permitted to reside on the first floor of the house for a limited period till she found an alternate accommodation, as was requested by her. This assertion has not even been rebutted by the defendant by filing any written statement. Not only that, to prove this assertion the plaintiff have examined independent witnesses as well, besides appearing himself as witness before the court. Even the evidence led by the plaintiff in that regard has gone totally unrebutted. The defendant has not led any evidence, whatsoever, in the suit. Therefore, there is no illegality in the findings recorded by the trial court, whereby; the possession of the defendant has been taken to be as a licensee.

8. Although the counsel for the appellant-defendant has submitted that defendant was put in possession of the house in question by the plaintiff as a tenant, however there is nothing on record even to remotely suggest the said aspect. It is obvious from the plaint itself that the plaintiff has not even mentioned the tenancy; in any form. The categorical stand of the plaintiff had been that it was a temporary arrangement under which the defendant was permitted to reside in the house for some time. The defendant has not even pleaded; or proved anywhere; that the possession taken by her was by way of tenancy. In absence of even any pleading regarding tenancy, the issue of tenancy cannot be thrust upon the plaintiff. He was required to prove the case as pleaded by him. The said responsibility has been duly discharged by

him. The bald assertion of the defendant, qua she being a tenant, cannot supersede the pleadings and proof brought on record by the plaintiff.

9. The only reason which the civil court seems to be swayed by is that there was mention of ₹6,000/- per month to be paid by the defendant. However, mere payment of money would not necessarily create a tenancy between the owner and the person who possess the property. There are several recognized means of creating some rights in property in lieu of monetary consideration. Every type of possession in lieu of money, cannot be held to be tenancy *per se*. Even the provision contained in Order 2 Rule 4 CPC envisages that along with a suit for possession the means profits can very well be claimed by the plaintiff. If any money is stated to have been claimed by the plaintiff at the rate of ₹6,000/- per month, that was only in lieu of usage and enjoyment of the property by the defendant, which as per the record, was for a limited period, as assured by the defendant herself at the time of entering into the property. Therefore, the applicability of the Rent Act is not invited in the present case. It is a pure and simple issue of recovery of possession with mesne profits by filing suit for possession by paying the appropriate court fees thereon. No fault could be found in the course of action adopted by the plaintiff. Suit filed by him is very much maintainable. Therefore, the court below has rightly reversed the judgment and decree passed by the trial court.

10. In view of the above, finding no merit in the present appeal, the same is dismissed.

12th MAY, 2023
'raj'

(RAJBIR SEHRAWAT)
JUDGE

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