

**77IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**RSA-1335-2023 (O&M)  
Date of Decision : 17.08.2023**

Pardeep Kumar

..... Appellant

Versus

Manjit Kaur

..... Respondent

**CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

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Present : Mr. Aditya Dassaur, Advocate  
for the appellant.

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**VIKRAM AGGARWAL, J (ORAL)**

1. This is defendant's regular second appeal challenging the judgment and decree dated 06.02.2023, passed by the District Judge, Shaheed Bhagat Singh Nagar, vide which the appeal filed by the appellant-defendant against the judgment and decree dated 03.12.2019, passed by the Addl. Civil Judge (Senior Division), Shaheed Bhagat Singh Nagar whereby the suit filed by the respondent-plaintiff for mandatory injunction was decreed, was dismissed.

2. The respondent-plaintiff Manjit Kaur filed a suit for mandatory injunction seeking a direction to the appellant-defendant to hand over the vacant possession of shop No.14 situated at Bhogal Market, Banga, District Shaheed Bhagat Singh Nagar (fully described in the plaint) (hereinafter referred to as 'the shop in dispute'). It was the case of the respondent-plaintiff that the appellant-defendant was a licensee under the respondent-plaintiff by virtue of a licence deed

to 30.07.2014. The licence fee was ₹1300/- per month. Legal notice dated 26.08.2016 was issued by the respondent-plaintiff cancelling the said licence deed and the appellant-defendant was called upon to remove his articles from the shop in dispute within a period of one month from the date of issuance of the legal notice. Since the same was not done, the suit was filed.

3. The suit was opposed by the appellant-defendant. In the written statement, certain preliminary objections with regard to maintainability, non-joinder of necessary parties, jurisdiction, the suit not having been valued properly for the purposes of Court fee, the respondent having suppressed material facts and not having approached the Court with clean hands etc. were raised. On merits, the execution of the licence deed dated 30.08.2013 was admitted. It was, however, denied that the appellant-defendant had occupied the shop in dispute by way of the licence deed. It was averred that he had been in possession of the shop in dispute for more than 20 years continuously and he had originally been inducted as a tenant by the husband of the respondent-plaintiff namely Jarnail Singh. Subsequently, Bahadar Singh, son of the respondent-plaintiff, insisted on the execution of a licence deed which was accordingly executed on 05.04.2004. After expiry of the same, the appellant-defendant remained as a tenant under Bahadar Singh and was never dispossessed. Thereafter, another licence deed dated 30.08.2013 was executed for 11 months which was the result of good relations between the two sides. After the expiry of the said licence deed on 30.07.2014, the respondent-plaintiff asked the appellant-defendant to enhance the rent to ₹1400/- per month which was agreed and the respondent-plaintiff started receiving rent @ ₹1400/- per month. However, no receipt was issued. All other averments were denied.

4. From the pleading of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled to mandatory injunction as prayed for ? OPP
2. Whether the suit is not maintainable ? OPD
3. Whether the plaintiff has not come to the Court with clean hands ? OPD
4. Whether the plaintiff has suppressed the real and material facts from the Court ? OPD
5. Whether the plaintiff is barred by his act and conduct to file the present suit ? OPD
6. Relief.

5. After both sides having led their evidence, the trial Court decreed the suit filed by the respondent-plaintiff holding that after the expiry of licence deed dated 30.08.2013, the appellant-defendant who was a licensee had no right to continue in the same.

6. Aggrieved by the said decision, an appeal was preferred which was also dismissed, leading to the filing of the present regular second appeal.

7. I have heard learned counsel for the appellant and have also perused the paper book.

8. Since the pleadings, copy of the licence deed and statements of the relevant witnesses are annexed with the paper book, the record was not summoned.

9. Learned counsel for the appellant strenuously urged that both the Courts below have gravely erred in decreeing the suit filed by the respondent-plaintiff. Learned counsel submitted that it was wrongly observed by the Courts below that the appellant-defendant was a licensee and on the expiry of a licence deed, he had no right to continue in the shop in dispute. Learned counsel made

efforts to prove that the respondent-plaintiff had not been able to prove that the licence deed had been executed. Reference has been made to the statements of PW1 Pavitar Singh, PW2 Satwinder Kumar, PW4 Paramjit, PW6 Sunny Padam and DW1 Pardeep Kumar. Learned counsel has contended that since the execution of the licence deed had not been proved and on the contrary, it had been proved that the appellant-defendant was a tenant in the shop in dispute, the only remedy with the respondent-plaintiff was to file an eviction petition under the provisions of the Rent Act instead of filing a suit.

Learned counsel has submitted that both the Courts below misconstrued the provisions of law in this regard and erroneously decreed the suit filed by the respondent-plaintiff. Pointed reference has been made to the cross-examination of PW1 Pavitar Singh and it has been submitted that the said witness, who was the power of attorney holder of the respondent-plaintiff and was also her son, could not give any details with regard to the facts of the present case and under these circumstances, no reliance could have been placed upon his statement.

Learned counsel has also submitted that PW1 Pavitar Singh duly admitted in his cross-examination that his mother i.e. respondent-plaintiff was unwell and was not in a position to depose in the case. He went on to state that she cannot give a statement even if a Local Commissioner was appointed to record her statement and she was in such a state of mind for the last 15 years.

Learned counsel has submitted that the said witness also admitted that the appellant-defendant was in possession of the shop in dispute for the last 22-23 years. Learned counsel has contended that this in itself could show the falsity of the case of the respondent-plaintiff.

Learned counsel has also contended that once the term of the licence had expired, there was no purpose of the issuance of a legal notice and even that had not been proved.

Reference has also been made to the provisions of Section 60 of the Indian Easements Act, 1882 and it has been contended that a perusal of the provisions could show that the licence could not have been revoked.

10. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit. The execution of the licence deed dated 30.08.2013 was duly admitted in the written statement. It was also stated that initially also a licence deed had been executed on 05.04.2004 by Bahadar Singh in favour of the appellant-defendant. While appearing in the witness box, the appellant-defendant admitted that he had not given any reply to the legal notice dated 30.08.2013. He, therefore, admitted the receipt of the said legal notice also. Once the execution of the licence deed and the receipt of the legal notice had been admitted, no evidence could have been led to disprove the said facts as no evidence contrary to the pleadings could have been led. Even otherwise, admission is the best evidence. The appellant-defendant, therefore, admitted that he was a licensee in the shop in dispute.

The plea that he was infact a tenant and not a licensee could not be proved by the respondent-plaintiff. No evidence worth its name was led to prove the said fact. No rent deed was produced. No receipt showing the payment of rent was produced. No other oral evidence was produced. Except for the self serving statement of the appellant-defendant, there was no evidence on the record of the case to prove that the appellant-defendant was a tenant in the shop in dispute. Both the Courts below examined the matter threadbare and arrived at concurrent

findings of fact which, learned counsel for the appellant-defendant, despite strenuous efforts, has not been able to find fault with.

I have gone through Section 60 of the Easement Act which lays down as under:-

License when revocable.-A license may be revoked by the grantor, unless-

(a) it is coupled with a transfer of property and such transfer is in force;

(b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

Further Section 5 of the Transfer of Property Act, 1882 lays down as under:-

In the following sections transfer of property means an act by .which a living person conveys property, in present or in future, to one or more other living persons, or to himself, <sup>2</sup>[or it himself] and one or more other living persons; and "to transfer property" is to perform such act.

[in this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]”

11. The aforesaid provisions would also not come to the aid of the appellant because there was no transfer of property as such. The mere execution of a licence deed would not amount to a transfer of property as envisaged under Section 60 of the Easements Act, 1882 and Section 5 of the Transfer of Property Act, 1882.

12. In view of the aforementioned facts and circumstances, I do not find any reason to interfere in the concurrent findings of facts recorded by both the Courts below.

Accordingly, finding no merit in the present appeal, the same is hereby dismissed.

(VIKRAM AGGARWAL)  
JUDGE

17.08.2023  
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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |