

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

RSA-5195-2019(O&M)

Date of decision:-6.2.2023

Rajan Dhir

...Appellant

Versus

Parmod Chander and another

...Respondents

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

Present: Mr.Aakash Kumar Gupta, Advocate and
Mr.Vinod Sharma, Advocate
for the appellant.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Parmod Chander had brought a suit against defendants Rajan Dhir and Jaswinder Singh seeking mandatory injunction directing the defendants to surrender the vacant possession of shop forming part of the property bearing No.ES-54-A, Dhobi Mohalla, Model Town Road, Jalandhar.

2. As per the case of the plaintiff, the defendants had taken this shop from the plaintiff on licence deed dated 15.1.2014 on payment of Rs.4,609/- per month as licence fee; the licence was for 11 months; since the defendants committed default towards payment of licence fee and the licence was terminated vide notice dated 13.10.2014, the plaintiff called

upon the defendants to surrender the vacant possession of the shop in question to him but defendants failed to do so, giving rise to a cause of action to the plaintiff to bring the suit.

3. On notice, the defendants appeared and filed a joint written statement contesting the suit raising various objections, however, they admitted having taken the shop in question on licence from the plaintiff vide licence deed dated 15.1.2014 stating that they had been paying licence fee to the plaintiff regularly. According to the defendants the shop in question and other property is joint amongst the plaintiff and his brothers Vijay Kumar and Vikram Kumar; the said brothers of the plaintiff had served a legal notice dated 29.7.2014 upon the defendants challenging the licence deed executed between plaintiff and defendants claiming a share in the licence fee; the defendants had informed the plaintiff about notice but plaintiff asked them to keep quiet stating that he would settle the dispute with his brothers; at last on 15.11.2014 the brothers of the plaintiff executed a licence deed dated 15.11.2014 in favour of the defendants for 11 months; the defendants are continuously paying licence fee to the brothers of the plaintiff, who are licensors and co-owners of the shop in question. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

4. The plaintiff had filed replication to the written statement of defendants controverting the allegations in the written statement whereas reiterating the averments in the plaint.

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

1. Whether the plaintiff is entitled for mandatory injunction as prayed for? OPP.
2. Whether the present suit is not maintainable? OPD.
3. Whether the suit is bad for non-joinder and misjoinder of necessary party? OPD.
4. Relief.
6. The parties were afforded opportunities to lead evidence in support of their respective claims.
7. After hearing the learned counsel for the parties, the trial Court of Civil Judge(Jr.Divn.), Jalandhar vide judgment and decree dated 12.4.2018 decreed the suit of the plaintiff and defendants were directed to hand over vacant possession of the disputed shop to the plaintiff within two months from the date of passing of the judgment.
8. Feeling aggrieved by the said judgment and decree, the defendant No.1 had filed an appeal in the Court of District Judge, Jalandhar, which were assigned to Additional District Judge, Jalandhar, who vide judgment and decree dated 2.3.2019 dismissed the appeal upholding the judgment and decree passed by the trial Court.
9. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendant No.1 has filed the present regular second appeal before this Court.
10. I have heard learned counsel for the appellant besides going through the record.
11. The defendants by their own admission admit taking the shop in dispute on licence from the plaintiff vide licence deed dated 15.1.2014

for a period of 11 months. It being so, there was relationship of licensor and licensee between the parties. On termination of the licence, the defendants/licensees were bound to hand over the vacant possession of the shop to the plaintiff since possession of the shop had been given to them by the plaintiff and none else. Merely because brothers of the plaintiff laid a claim in the property asking for share in the licence fee does not mean that the defendants could bring their relationship with the plaintiff to an end unilaterally and accept his brothers to be licensors paying licence fee to them. The defendants having taken the shop on licence from the plaintiff were estopped to deny the relationship of licensees and licensor between the parties and accept brothers of the plaintiff as his licensors and start paying licence fee to such brothers and stop payment of such fee to the plaintiff. The defendants were bound to hand over the vacant possession of the shop to the plaintiff on termination of their licence, thereafter, they might have taken the shop from brothers of the plaintiff on lease, rent or licence in case they were in a position to deliver possession to the defendants.

12. With such concurrent findings being there, which are based on proper appraisal of evidence and correct interpretation of law and there being no illegality or infirmity with the impugned judgments and decrees passed by the Courts below, there is no ground to interfere with such impugned judgments and decrees in regular second appeal.

13. No substantial question of law arises in this appeal.

14. Finding no merit in the appeal, the same stands dismissed.

Since the main appeal is dismissed, the miscellaneous

application(s), if any stands disposed of accordingly.

6.2.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No