

2023:PHHC:103328

129 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4181-2023

Date of decision: 09.08.2023

MAKHAN SINGH

...Petitioner

V/s

MANJEET SINGH

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Parvinder Singh, Advocate
for the petitioner.

SANJAY VASHISTH J. (ORAL)

1. Petitioner Makhan Singh (plaintiff in the suit) has filed a suit for permanent injunction against Manjeet Singh-defendant restraining him from causing any damage to any portion of property in possession of the plaintiff as the plaintiff is claiming himself to be tenant under one Kamaljeet Singh, who is brother of the defendant-Manjit Singh.

 In the written statement filed by the defendant, categorical stand has been taken that the plaintiff was never inducted as tenant in the property. Rather, a portion of the house was given to him to reside as licensee and such license of the plaintiff was revoked on 14.12.2022 and since then, plaintiff is being asked to hand over the possession to the defendant, but to no avail.

2. Impugned order dated 31.05.2023 has been passed by the trial Court on the application moved by the plaintiff (petitioner herein), whereby he claimed the restoration of his electricity connection. While dealing with the application, written statement was filed by the defendant and no replication was filed by the plaintiff. Even to the counter claim filed by the defendant, no reply has been filed. Further to substantiate the

pleading that he is inducted as tenant by brother of the defendant, no document or any receipt of rent has been produced by the plaintiff.

3. On being faced with the said situation, counsel argues before this Court that the evidence would be led at the time of recording of the evidence of the respective parties. Therefore, at this stage he does not require to produce any document whatsoever of prima facie nature for the purpose of showing himself to be occupying the premises on tenancy basis. While hearing the petitioner, this Court has also gone through the plaint in which the plaintiff has pleaded that he is the tenant. Surprisingly, nowhere, amount of rent has been mentioned/disclosed by the plaintiff. Thus, there is nothing on record for this Court to consider the prayer of the plaintiff for the purpose of considering his status as a tenant or a lawful occupant. Relevant observation made by the trial Court on the application moved by the plaintiff is reproduced hereinbelow:

“Nothing is there on record to prima facie substantiate the pleadings of plaintiff that he has been tenant of brother of defendant in suit property. No document is placed on record to prima facie show that plaintiff has ever paid any rent qua suit property to anyone including defendant or his brother. Written statement to counter claim has not been filed yet and replication is also not preferred to be filed by plaintiff to rebut the claim of defendant. The electricity connection in the suit property is in the name of defendant as being depicted by the electricity bill on record. The alleged phone conversation between the parties is placed on record in a pen drive. The same prima facie substantiates the pleadings of defendant that plaintiff has been merely kept as care taker in the suit property by defendant and that such license of plaintiff has been revoked by defendant. In such a scenario, it appears that plaintiff prima facie has no right/title/authorization to possess the suit property

and the heavy onus would be there upon plaintiff to prove his plea with cogent evidence that he is tenant who is in legal possession of suit property. At this stage, plaintiff appears to be not having any such authorization/right in the suit property. The case titled as Om Parkash (supra) relied upon by Id. counsel for plaintiff provides for different facts and has no bearing on present case. In such case, the tenant was holding over the possession of the leased premises even after expiration of lease under rent agreement between the parties. In the present case, there is no prima facie rent agreement, either oral or written, between the parties.

In such circumstances, when plaintiff has failed to prima facie show his legal authorization to have possession in a portion in suit property, then plaintiff is not having any right to seek restoration of electricity or water supply during pendency of suit. It is settled position of law that a person holding the premises in the capacity of care taker or a servant would not acquire any right or interest in the property and even long possession in that capacity would be of no legal consequences. Therefore, application under Section 151 CPC moved by plaintiff for seeking restoration of electricity and water supply is dismissed. Nothing in this order shall affect the merits of case.

To come up on 21.07.2023 for filing replication, if any, and for filing written statement to counter claim.”

4. Counsel has relied upon the judgment titled as **Dipali Dey (Baxi) Vs. Mira Das** 2009(11) SCC 495, and submits that even if the plaintiff is an illegal occupant, he would be entitled to get the electricity supply restored in view of the observations made in the cited judgment. As per the facts of the case of **Dipali Dey** (supra), plaintiff had filed a suit for

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declaration saying that she is a tenant in respect of the premises in question at a rental of Rs. 150/- per month. Said suit was instituted against true owner of the property, who inducted the plaintiff-Dipali Dey as tenant in the premises.

5. However, in the facts and circumstances of the present case, plaintiff as petitioner herein has filed a suit for permanent injunction by claiming himself to be tenant in the premises, but nothing is disclosed about the amount of rent. No documentary evidence such as rent note, rent deed, receipt etc. ever issued by the owner has been produced. Moreover in the cited case, owner of the property, who allegedly inducted her as tenant was impleaded as defendant, whereas in the present case it is the admitted fact in the suit that the petitioner-plaintiff was inducted as tenant by brother of the defendant.

This pleading has been raised in the plaint without impleading the owner of the property who inducted the plaintiff as tenant.

6. Thus the facts and circumstances of the case in hand are quite different to the cited case.

7. After going through the complete record of the revision petition, I do not find any reason to interfere with the well reasoned order passed by the trial Court.

8. Accordingly, the same is maintained and the present revision petition is hereby dismissed.

(SANJAY VASHISTH)
JUDGE

09.08.2023

Ajay Goswami