

Sr. No.112

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

RSA-1770-2022 (O&M)

Date of Decision: 25.01.2023

Harjit Singh

...Appellant

Vs.

Jaswinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jaideep Verma, Advocate
for the appellant.

Mr. Anil Sharma, Advocate
for the respondent.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are addressed as per the recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, defendant No.1 is in second appeal before this Court assailing the trial Court judgment and decree dated 21.08.2019, as upheld by learned First Appellate Court vide its judgment and decree dated 06.08.2022.

3. Succinct facts, as noticed by Courts below, are that plaintiff (respondent herein) purchased plot of 5 Marlas through registered sale deed dated 04.05.2004. After that plaintiff got sanctioned site plan from Municipal Council, Kharar on 25.09.2005 and constructed a double-storeyed house on the said plot after taking loan from the bank and some more amount was spent by plaintiff. He had paid the said loan along with interest in installments. It was stated that earlier plaintiff, defendant No.1(appellant herein) and their mother all lived together in a rented accommodation at Mohali for several years. However, plaintiff constructed

his own house and shifted to the same with their mother and defendant No.1 kept on staying at Mohali in the rented accommodation.

3.1. Thereafter, on asking of defendant No.1 and their mother, plaintiff allowed defendant No.1 to reside on the first floor of the house in dispute and their mother was residing on the first floor with defendant No.1 as there were two bedrooms. Plaintiff allowed defendant No.1 as a licensee to stay on the first floor with an understanding that he shall construct his own house within 3-4 years and he shall vacate the upper portion and their mother was also residing with him as licensee on the first floor of the house in question. However, defendant No.1 did not construct his house and when plaintiff requested him to vacate the house, he agreed that he be allowed to continue for some time to stay and also agreed to pay rent @ Rs.6500/- per month on 15.08.2012.

3.2. However, he stopped paying rent on 01.09.2015. Plaintiff filed the ejectment petition on 15.09.2017, which is pending between the parties. In the written statement filed by defendant No.1 in that petition, he denied the relationship of landlord and tenant, rather he claimed that house in question was owned by him and their mother jointly as the same was allegedly constructed with joint funds. Hence, plaintiff-respondent filed civil suit for declaration and mandatory injunction against defendant No.1 and also claimed mesne profits of arrears of rent @ Rs.10,000/- per month.

4. Upon notice, defendant No.1 appeared and filed written statement taking preliminary objections regarding maintainability, suppression of material facts from the Court, locus-standi and that suit was barred under Order 2 rule 2 CPC.

4.1. On merits, defendant No.1 claimed that the property in question was purchased from the joint funds of defendant No.1, plaintiff and their mother.

Plaintiff and defendant No.1 jointly cleared the bank loan. Plaintiff is not sole owner of the house in question.

5. Plaintiff also filed replication thereto denying the claim of defendant No.1.

6. Based on the rival pleadings, following issues were framed:

1. Whether the plaintiff is entitled to relief of declaration as prayed for? OPP
2. Whether the plaintiff is entitled to relief of mandatory injunction? OPP
3. Whether the plaintiff is entitled to recovery of mesne @ Rs.10,000/- per month as prayed for? OPP
4. Whether the present suit is not maintainable? OPD
5. Whether the present suit is barred under Order 2 Rule 2 CPC?
6. Relief.

7. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

8. On appraisal of evidence vis-à-vis pleadings, issues No.1, 2, 4 & 5 were decided in favour of the plaintiff-respondent No.1, whereas issue No.3 was decided against the plaintiff and consequently, the suit of the plaintiff-respondent was partly decreed for declaration and mandatory injunction by learned trial Court vide impugned judgment and decree dated 21.08.2019.

9. Aggrieved, defendant No.1-appellant preferred first appeal which was dismissed by learned First Appellate Court.

10. Learned First Appellate Court below dismissed the appeal, resulting in instant Regular Second Appeal before this Court.

11. Learned counsel for appellant strenuously argues that the relationship of licensor and licensee has to be established where a right to live in property has been challenged by licensee. However, with or without license, suit for mandatory injunction is maintainable only in those

circumstances where under revocation of license, proceeding has been initiated within few months and in case of lapse of sometime the suit for possession would be maintainable. He further argues that simpliciter suit for declaration without claiming possession by the plaintiff not in possession is not maintainable. To buttress his contentions, he relies on the judgments passed by this Court in *Sita Devi and others vs. Sheela and others*, **RSA No.2648 of 2013, decided on 26.08.2015**; *Malkiat Singh vs. Shingara Singh*, **2018 (4) R.C.R. (Civil) 79** and that of the Jammu and Kashmir High Court in *Th. Milka Singh and others vs. Th. Diana and others*, **1964 AIR (J&K) 99**.

12. I have heard learned counsel and perused the judgments of both the Courts below.

13. Briefly stated, the contentions herein are that the suit for mandatory injunction filed after six years of revocation of license was not maintainable; it was also barred as the plaintiff had alleged that he was the landlord and the defendant appellant was the tenant and that the courts below have overlooked material evidence while returning the findings against the appellant. In my opinion, these contentions are untenable.

14. In the earlier round of litigation, the defendant had denied being its licensee or a tenant under the plaintiff and had set up a specific plea that he is the co-owner of the suit property. Instant suit was then filed by the plaintiff for declaration of his title as owner and for mandatory injunction for possession. The defendant cannot, therefore, now turn around and say that he was a licensee and the suit was filed long after revocation of his license or that this being a dispute between the landlord and tenant, a civil suit for possession was not maintainable. The defendant failed to prove that he was a co-owner of the property. In my opinion, the concurrent findings of fact recorded by the learned

trial Court and the learned First Appellate Court while deciding the issues are in consonance with the record and the same are correct. Relevant part of First Appellate Court judgment, with which, *inter alia*, I am in agreement, is as below:-

“xxxx xxxx xxxx xxxx

16. So, it is clearly proved on the file that plaintiff / respondent constructed the house after purchasing plot vide sale deed Ex P1 and it is also admitted by appellant/defendant while appearing as DW-1 that for construction of the house, plaintiff had raised loan of Rs.6 lacs from Punjab National Bank. Appellant/defendant Harjit Singh DW-1 has also admitted in his cross-examination that plaintiff himself repaid the loan amount in installments. Learned counsel for the appellant has argued that the construction of suit property was completed by plaintiff/respondent, appellant/ defendant and their mother Gian Kaur from their joint funds, but there is no evidence on the file that construction of house in dispute was raised by using joint funds. From the affidavit Ex DW2/A filed by Gian Kaur, defendant No.2, while appearing as DW-2, it is nowhere stated that she contributed any amount for construction of said house. Plaintiff/ respondent has proved on record documents of house loan of Rs.6 lacs taken by him from Punjab National Bank, which are Ex. P3 and Ex.P4. It is also proved on the file that plaintiff respondent himself returned the said loan amount in installments and 'No Due Certificate' dated 06.05.2014 Ex.P8 has been issued in this regard by the said bank in favour of respondent/plaintiff. So, from all the documents and evidence led on the file, it is crystal clear that respondent plaintiff had constructed the house in dispute after purchasing the plot and by raising loan of Rs.6 lacs from Punjab National Bank. Appellant / defendant No.1 Harjit Singh while appearing as DW-1 has admitted this fact that plot on which the disputed house was constructed was purchased by respondent / plaintiff by raising loan from bank and he himself had repaid the loan to the bank in installments. It has been rightly held by the learned trial Court that by installation of Electricity Meter in the name of appellant / defendant, it is not proved that appellant / defendant is joint owner of the house, but it only proves the possession of appellant / defendant and possession of defendant Harjit Singh has not been denied by respondent/plaintiff.

xxxx xxxxx xxxxx xxxxx”

15. Having perused the impugned judgments, my considered opinion is that the submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in

the submissions that the impugned judgments are based on conjectures and surmises.

16. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties. Even the judgments relied upon by the learned counsel for the appellant are not applicable in the facts and circumstances of the present case.

17. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

18. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

19. As an upshot of my preceding discussion, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

20. Pending application/s, if any, shall also stand disposed of.

21. No order as to costs.

(ARUN MONGA)
JUDGE

January 25, 2023
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No