

Neutral citation No. **2023:PHHC:072954**

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA 5764 of 2019 (O&M)

Date of decision : May 17th 2023

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Ms. Kanchan Sharma

.....Appellant

vs.

Anupama Aggarwal

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. D.K. Prajapati, Advocate for the appellant

Ms. Tanika Goyal, Advocate for

Mr. Kunal Dawar, Advocate for the respondent.

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H. S. Madaan, J. (Oral)

1. Briefly stated, facts of the case are that plaintiff – Anupama Aggarwal, aged 37 years w/o Amit Rampal, r/o House No. 1312, Sector 15, Faridabad, had brought a suit against defendant Kanchan Sharma, d/o Yashpal Sharma, r/o House No. B-17, RPS Green Valley, Faridabad, claiming possession, mesne profits/damages, arrears of unpaid charges for use and occupation with interest thereon, besides decree for permanent injunction.

2. As per version of the plaintiff, the suit property bearing House No. B-17, RPS Green Valley, Faridabad, belongs to the plaintiff and she had given the same on rent to one Amit Pal Singh

Kapoor in December 2013, who had vacated that house in January 2016. The tenancy of Amit Pal Singh Kapoor had been created through one property dealer namely, Dharamvir Grover, who is having an office in Green Valley Plaza. After vacation of the house in question by Amit Pal Singh Kapoor, the keys of that house were handed over to Dharamvir Grover, Property dealer, so that the house can be got repaired and painted because the plaintiff alongwith her family intended to shift there.

3. On 30.1.2016, husband of the plaintiff was contacted by Dharamvir Grover seeking permission to allow the defendant and her family to use the house in suit for a period of two weeks on account of some marriage in their family. Husband of the plaintiff did not grant the necessary permission. However, when after about one week husband of the plaintiff visited the house to find out about the progress of repair work, he was surprised to see that the defendant alongwith her family were occupying that house. On being enquired from Dharamvir Grover, Property Dealer, he apologized to husband of the plaintiff for letting the defendant and her family enter the house in suit. However, he stated that the defendant and her family members were his close friends and were in need of the house due to some function in the family. Dharamvir Grover assured that the defendant and her family would vacate the house in a fortnight.

4. The defendant had also requested the plaintiff that she might be allowed to use the house for a fortnight as a licensee and she was prepared to do so purely on humanitarian grounds. The

defendant had promised to vacate the house within a fortnight giving assurance that in case she was unable to find a suitable accommodation within a fortnight, she would pay the license fee @ Rs.44,000/- per month to the plaintiff for use and occupation of that house. After expiry of a period of eight months, the plaintiff requested the defendant to hand over the vacant possession of the house to her, since they were occupying such house without paying any charges for use and occupation.

5. Though the plaintiff was reluctant to accept any amount from the defendant, but when the tenant persisted, the plaintiff agreed to accept a sum of Rs.44,000/- per month as license fee and the defendant had agreed to pay the same to the plaintiff by 7th of every month. However, in order to create false evidence, the defendant had got transferred an amount of Rs.15,000/- on 3.6.2016, through RTGS from account of one Rishipal, who was not known to the plaintiff or her husband earlier. The plaintiff further pleaded that since the month of May 2016, she had been repeatedly requesting the defendant to vacate the house because the defendant was neither making payment of license fee nor that of maintenance charges to the Residents Welfare Association. Resultantly, the Residents Welfare Association, was forced to disconnect the electricity supply to the house owned by the plaintiff. As the version of the plaintiff further goes, the defendant with a mala fide intention had filed a suit under the Haryana Rent Control Act, against the plaintiff claiming herself to be a tenant in the house. In that suit, the plaintiff had filed an application under

Order 7 Rule 11 CPC, seeking rejection of the plaint. Further the defendant had filed another suit for permanent injunction against the plaintiff and the Residents Welfare Association. The plaintiff had lodged a criminal complaint against the defendant and her family members, as trespassers over the suit property. The defendant and her family were called to the Police Station where the defendant and her father made a statement to the effect that they would vacate the house within a week. However, they did not do so and rather filed a suit for permanent injunction against the plaintiff. According to the plaintiff, she had withdrawn her consent for use and occupation of the house by the defendant and terminated the license and thereafter asked the defendant to vacate the house but the defendant did not do so. The plaintiff got served a legal notice upon the defendant through her counsel, which was duly received by her but the defendant neither replied to the legal notice nor vacated the house. Feeling aggrieved, the plaintiff had brought the suit in question.

6. On notice, the defendant appeared and filed a written statement raising various legal objections, contending that the suit is not maintainable because the defendant is a tenant under the plaintiff and the plaintiff should have filed an ejectment petition against the defendant under Section 13 of the Haryana Urban (Control of Rent and Eviction), Act, 1973; that the defendant had been paying the rent @ Rs.15,000/- per month to the plaintiff but the plaintiff always avoided to issue rent receipt to the defendant. That the defendant had been making payment of electricity charges to the Residents Welfare

Association regularly. On 13.2.2016 the plaintiff alongwith some antisocial elements entered into the house in question forcibly and tried to dispossess the defendant therefrom. They had given beatings to her and her family members. Therefore, the defendant had lodged a police complaint against the plaintiff and other culprits at Police Station, Suraj Kund, Faridabad. The plaintiff in collusion with Residents Welfare Association had disconnected the electricity supply. The defendant had filed an application under Section 10 read with Section 22 of Haryana Urban (Control of Rent and Eviction), Act, 1973, for restoration of electricity connection and it was so restored as per order of the Board. That the husband of the plaintiff, namely, Amit Rampal had sent an email on 6.5.2016 at 3.45 P.M. To Residents Welfare Association, Green Valley, wherein he himself had admitted that the defendant was a tenant stating that he was planning to terminate the lease in favour of the defendant. The defendant had transferred Rent amount of Rs.15,000/- through NEFT on 3.6.2016 in account of the plaintiff on request of the plaintiff and the plaintiff had accepted the said amount. There is no relationship of licensor and licensee between the parties. The defendant had filed a petition before the Rent Controller, which is still pending. The defendant admitted having filed a suit for permanent injunction against the plaintiff. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

7. No replication was filed by the plaintiff.

8. From the pleadings of the parties, following issues were

framed by the trial Court vide order dated 11.7.2007:-

1. Whether the plaintiff is entitled to a decree of vacant and actual possession of suit property detailed in para No.1 of the plaint as pleaded ? OPP
2. Whether the plaintiff is also entitled to a decree for recovery of Rs.4,25,000/- from the defendant as mesne profits/damages/compensation for the period from February, 2016 till November, 2016 prior to the institution of the suit and Rs.44,000/- pr month for the use and occupation of the suit property from the date of filing the suit till the date she obtains actual vacant possession alongwith interest @ 18% as pleaded? OPP
3. Whether the plaintiff is entitled to a decree for permanent injunction as prayed for ? OPP
4. Whether the suit is not maintainable in the present form ? OPD
5. Whether the suit is false and frivolous in nature? OPD
6. Relief.
9. Parties lead evidence in support of their respective claims.
10. During the course of evidence of plaintiff, she got her statement recorded as PW-1, tendering affidavit Exhibit P-A, Amit Rampal husband of the plaintiff appeared as PW-2 and submitted affidavit Exhibit PW2/1. After tendering documents, counsel for the plaintiff, closed the evidence of the plaintiff.

11. In rebuttal, the defendant, Kanchan Sharma, stepped into witness box as DW-1, tendering her affidavit Exhibit DW1/A. The defendant further relied upon certain documents and closed her evidence.

12. During rebuttal evidence, the plaintiff had tendered certain documents.

13. After hearing the arguments, the trial Court of Civil Judge (Senior Division), Faridabad, vide detailed judgment dated 30.4.2019 had decreed the suit of the plaintiff, directing the defendant to hand over peaceful, vacant possession of the house to the plaintiff within a period of two months from the date of decree and to pay mesne profits to the plaintiff @ Rs.15,000/- per month w.e.f. February 2016 till 30.11.2016 and thereafter at the same rate until peaceful vacant possession of the house was handed over by the defendant to the plaintiff. In addition to that the defendant was directed to pay interest on the amount so payable @ 6% per annum w.e.f. February 2016 till vacant possession of the house was delivered to the plaintiff. It was observed that the amount already paid by the defendant to the plaintiff prior to the institution of the suit and during pendency of the suit shall be set off against the amount so calculated. The defendant was further directed to pay the outstanding water bills, electricity bills and gas consumption bills qua the house in suit since February 2016 till vacant possession thereof was handed over by the defendant to the plaintiff. In addition to grant of such relief, the defendant was restrained permanently from selling,

transferring or alienating the house in suit and also from parting with its possession or from creating third party rights over the same. This was so done vide order dated 30.4.2019.

14. Feeling aggrieved the defendant Ms. Kanchan Sharma, had preferred an appeal against the judgment and decree passed by the trial Court before the District Judge, Faridabad, who vide judgment dated 15.11.2019, had dismissed the appeal and upheld the judgment and decree passed by the trial court by affirming the finding of the lower court on all the issues.

15. Still feeling aggrieved, the defendant has approached this Court, by way of filing the present appeal, notice of which was given to the respondent, who has appeared through counsel.

16. I have heard learned counsel for the parties, besides going through the record.

17. Here both the Courts below in light of the pleadings of the parties and analyzing the evidence, brought on record by the contestants, and considering the legal position on the subject, have returned concurrent findings that the defendant and her family members are in possession of the house in suit belonging to the plaintiff as licensee. Her claim that she alongwith her family are in possession as tenants on payment of rent was considered and rejected. The Courts below have reached the conclusion that the plaintiff has since revoked the license of the defendant with the result she was liable to vacate the house in suit and hand over its vacant possession to the plaintiff. The judgment and decree passed by the

trial court as well as the judgment and decree passed by the District Judge Faridabad, are quite detailed, well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. I do not find any illegality or infirmity therein which might have called for interference by this Court while hearing the present regular second appeal.

18. No substantial question of law has arisen in the present appeal.

19. Accordingly, the appeal being without any merit, stands dismissed.

May 17th, 2023
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No