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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****RSA-1437-2016 (O&M)****Reserved on : 12.02.2024****Date of Decision: 20.02.2024**

Surinder Kumar Puri through LRs

....Appellant

VERSUS

Pawan Kumar

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Varun Sharma, Advocate for the appellant.

Mr. Ajaivir Singh, Advocate for the respondent.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant-appellants against the judgment and decree dated 26.04.2012 passed by the Trial Court and the judgment and decree dated 14.12.2015 passed by the First Appellate Court.

2. The brief facts relevant to the present *lis* are that the suit property was originally owned by one Nand Rani wife of Sh. Dharam Vir who transferred the same in favour of the plaintiff-respondent vide transfer deed dated 06.11.2007. It is an admitted fact that till date the transfer deed has not been challenged by anyone. The plaintiff-respondent became owner of the suit property on the basis of the said transfer deed. The present suit was filed by the plaintiff-respondent for mandatory injunction directing the

defendant-appellant to vacate and hand over vacant possession of the house on the basis of title. It was averred in the plaint that the defendant-appellant was a licensee and that the plaintiff-respondent had revoked the license of the defendant-appellant and requested him to hand over vacant possession of the house. However, he had refused to hand over vacant possession. Hence, the present suit. On notice the defendant-appellant filed his written statement contesting the suit by raising preliminary objections regarding maintainability, act and conduct, non-joinder and mis-joinder of necessary parties. On merits it was denied that the defendant-appellant is a licensee in the suit property. It was the stand taken in the written statement that the parties alongwith their mother - Smt. Nand Rani - lived in the house on the ground-floor of the building. A meeting was held in 1983 between the mother and the parties in the presence of relatives and Nand Rani let out the property in question to the defendant-appellant @ Rs.50/- per month and the defendant-appellant shifted to the second floor of the building and started living there alongwith his family. The accommodation in possession of the defendant-appellant is stated to comprise of one room, bathroom, washroom, kitchen, courtyard covered with shed, roof/terrace and staircase. It was further averred that the rent was enhanced to Rs.100/- per month in the year 1990 and then to Rs.200/- per month in the year 1997 and thereafter to Rs.300/- per month in the year 2003. However, the rent was not enhanced after 2003 by Nand Rani. No rent note or agreement was entered into due to the close relationship between the parties. The rent was regularly paid to Nand Rani but she did not issue any receipts due to the relationship between the parties. Replication was filed.

3. On the basis of the pleadings of the parties the following issues were framed :

- 1) Whether plaintiff is entitled for the relief of mandatory injunction directing the defendant to hand over the vacant possession of property in dispute ? OPP
- 2) Whether the suit of the plaintiff is maintainable in present form ? OPP
- 3) Whether defendant is tenant over the suit property? OPD
- 4) Whether suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties ? OPD
- 5) Whether plaintiff has no cause of action to file the present suit ? OPD
- 6) Whether site plan placed on file is wrong ? OPD
- 7) Relief.

4. The Trial Court vide judgment and decree dated 26.04.2012 decreed the suit of the plaintiff-respondent and directed the defendant-appellant to deliver vacant possession of the suit property within a period of two months. Aggrieved by the judgment and decree passed by the Trial Court, an appeal was preferred by the defendant-appellant. The First Appellate Court vide judgment and decree dated 14.12.2015 dismissed the appeal. Hence, the present regular second appeal.

5. Learned counsel for the defendant-appellant would contend that an application was filed for additional evidence for examining the mother - Nand Rani - before the First Appellate Court, however, the same was not

decided. Learned counsel would further contend that three witnesses had stepped into the witness box who had deposed regarding the tenancy in favour of the defendant-appellant. One was DW1-Vajinder Pal Singh @ Pali who stated that the suit property was given on rent by the mother of the parties to the defendant-appellant @ Rs.50/- per month. The second witness who stepped into the witness box was Surekha Rani widow of Surinder Kumar Puri (defendant-appellant) and third witness was DW3 - Rakesh Behl - who also stated the family arrangement and regarding the property being given to the defendant-appellant on rent. It is further the contention of the learned counsel that the plaintiff-respondent has not been able to prove that there was a license in favour of the defendant-appellant.

6. *Per contra* the learned counsel for the plaintiff-respondent would contend that both the Courts have concurrently found that the plaintiff-respondent is the owner of the suit property and that the defendant-appellant had failed to prove that the demised premises had been given on rent to him by the mother of the parties and in view thereof the Trial Court rightly decreed the suit and the appeal was also dismissed by the First Appellate Court.

7. I have heard the learned counsel for the parties.

8. In the present case the plaintiff-respondent came to Court averring that the suit property had been transferred in his favour by his mother vide the transfer deed dated 06.11.2007. It is an admitted position that the said transfer deed has not been challenged till date. Even the defendant-appellant chose not to file any counter-claim laying any challenge to the transfer deed. It was the case set up by the plaintiff-respondent that the

defendant-appellant is in possession of the suit property as licensee. The defendant-appellant took a stand that the mother of the parties had given the suit property on rent to him @ Rs.50/- per month which was enhanced from time to time. The Trial Court and the First Appellate Court both returned concurrent finding of fact that the defendant-appellant failed to prove that he was tenant in the suit property. PW3 - Ashok Kumar - the brother of the plaintiff-respondent and brother-in-law of Smt. Surekha Rani, stepped into the witness box and proved the execution of the transfer deed (Ex.P1). He further deposed that Nand Rani had been requested by the defendant-appellant to provide a period of two months to vacate the suit property and deliver vacant possession, however, he did not vacate the demised premises. There is not an iota of evidence on the record to prove the version as put forth by the defendant-appellant that he was tenant in the suit property and was paying rent to Nand Rani. DW1 - Vajinder Pal Singh @ Pali - though supported the version of the defendant-appellant, however, in his cross-examination stated that though the meeting took place between Nand Rani and the defendant-appellant, however, they were not known to him. He further stated that Rs.50/- was paid in his presence by the defendant-appellant to his mother - Nand Rani - only once. The learned counsel for the defendant-appellant has argued that the application for additional evidence whereby the defendant-appellant wanted to produce his mother as a witness was not decided by the First Appellate Court and hence the judgment and decree need to be set aside cannot be accepted as in the interregnum Smt. Nand Rani has expired on 25.03.2023 and hence no useful purpose would be served by remanding the case for a decision on the application as the person

whom the defendant-appellant sought to produce as a witness has since expired.

9. In view of the above, I do not find any merits in the present regular second appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

20.02.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO