

2024:PHHC:037295
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Date of decision :14.03.2024

...Appellants

...Respondents

...Appellants

...Respondents

2. These two appeals have been filed by the counter-claimants. The plaintiffs (respondents herein) filed a suit for the grant of decree of permanent injunction claiming that they are in possession of the shop while working as 'Ved Tailor and Drapers', since 1990. The defendants, while contesting the suit claimed that the plaintiff is not in possession of shop. Subsequently, it was asserted that the plaintiff was permitted to occupy the shop as a licensee in February, 2006. Thus, a counter-claim for the grant of relief of mandatory

injunction was prayed for. The trial court dismissed the suit whereas, decreed the counter-claim. However, the First Appellate Court has reversed the judgment and decree passed by the trial Court while recording the following two findings:-

- i. The plaintiff is proved to be in settled possession of the shop since 1990 as he has produced electricity bills and its payment from 1990 till filing of the suit.
- ii. The counter-claimants have failed to prove the authenticity of the license granted in favour of the plaintiff in the year 2006 as the plaintiff is in continuous possession of the shop since 1990.

3. The First Appellate Court observed that the counter-claimants can file the separate suit for possession.

4, Heard the learned counsel representing the appellant at length and with his able assistance perused the paper-book.

5. Learned counsel representing the appellants submits that the electricity bills from the year 1990 have been issued in the name of their predecessor. He further submits that the suit for mandatory injunction is maintainable as a substitute for suit for possession. He relies upon judgment passed in 'Joseph Severance and others Vs. Benny Mathew and others' 2005 (2) RCR (Rent) 493.

6. This Court has considered the submission of the learned counsel representing the appellant. It shall be noted here that the counter-claimants filed the counter-claim specifically asserting that the plaintiff was permitted to occupy the shop as a licensee in February 2006. However, they have failed to

prove this fact. The plaintiff have produced the electricity bills from the year 1990 till 2007, which shows that the plaintiff is in continuous possession of the shop since 1990. The First Appellate Court has already granted liberty to the counter-claimants to file an appeal. The remedy of filing a suit for mandatory injunction shall be awaited promptly, i.e. immediately after the cause of action arises.

7. On a Court question, the learned counsel representing the appellants admits that the remedy for the plaintiff is not only limited to the filing of a counter-claim.

8. In the circumstances of the present case, the plaintiff is in settled possession. In absence of the evidence to prove that the plaintiff was inducted as a licensee by the counter-claimants, the suit for mandatory injunction shall not be maintainable. This Court has carefully read the judgment passed by the Supreme Court in *Joseph Severance’s case* (Supra). In that case, the relationship of licensor and licensee was not in dispute. The Court came to conclusion that a license was granted and it had been terminated. Hence, the suit filed by licensor was held maintainable as he terminated the license. With the greatest respect, the aforesaid judgment shall not be applicable to the facts of the matter at hand

9. Keeping in view the aforesaid facts and discussion, both the appeals are dismissed.

10. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

14.03.2024
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Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No