



(Pronouncement)
**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.5025 of 2017 (O&M)

Raj Kumar (since deceased) through LRs
..... Appellant(s)-plaintiff(s)

Versus

Rakesh Kumar and others
..... Respondent(s)-defendant(s)

1	The date when the judgment was reserved	16.01.2026
2	The date when the judgment is pronounced	10.04.2026
3	The date when the judgment is uploaded on the website	16.04.2026
4	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof.	Not applicable

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Argued By:- Mr. Ankit Swarup, Advocate (through video-conferencing) and
Mr. Siddhanth Arora, Advocate
for the appellant(s)-plaintiff(s).

Mr. Sudhir Makkar, Advocate
for the respondent(s)-defendant(s)
(through video-conferencing)

HARKESH MANUJA, J.

The legal representatives of appellant-plaintiff (Raj Kumar) are in appeal. First Appeal filed by the plaintiff-Raj Kumar (since deceased) was dismissed by the learned First Appellate Court. For the sake of convenience, the parties are referred to as per their status in the Civil Suit.

[2] By way of present appeal, challenge has been laid to the judgments and decrees dated 04.01.2013 & 11.07.2017 passed by both the Courts below, whereby a suit for mandatory injunction filed at the instance of appellant-plaintiff / Raj Kumar (since deceased) seeking directions against the respondents-defendants to handover vacant possession of portion of House No. F-3/13, Bhagat Singh Chowk, Hisar, shown as WXYZD in the site plan and also for grant of perpetual injunction from restraining the defendants from making any repair or construction over it, was dismissed.

FACTS

[3] Briefly stating, the plaintiff-Raj Kumar (since deceased) filed the above-mentioned suit with the averments that the suit property was an evacuee property, allotted to plaintiff as against his verified claim. Later, a dispute arose with respect to the rights of the plaintiff in the suit property which came to be finally decided by the Hon'ble Apex Court in Civil Appeal No. 161 of 1999, vide decision dated 06.04.2004; followed by another order dated 14.07.2006; in terms of which the plaintiff initially deposited Rs.1,50,000/- and thereafter, another sum of Rs. 75,000/- with State of Haryana and thus, became owner in possession of the suit property measuring 548.33 square yards. It was further pleaded that the property was located in Hisar, whereas the plaintiff was employed at some distance and so as to look after his parents, the predecessor-in-interest of defendant, namely, Amir Chand, who was known to the family, was requested to live in a portion of the suit property against no charge and thus, became the licensee, having no title therein. It was also stated that the license had since been revoked and despite having been repeatedly called upon to deliver the possession, the defendants

continued to retain the same without any right, title, or interest. It was also pleaded that the suit property had also become unfit and unsafe for human habitation. Hence, the suit.

[4] In response, a joint written statement was filed by the defendants-respondents, wherein it was stated that the suit property was an evacuee property, possessed by six persons besides the plaintiff; one of those being Durga Parshad handed over his possession to the predecessor of defendants-Amir Chand. It was further pleaded that the suit property was later put to auction by the State Government on 14.09.1987, wherein the plaintiff also participated and a dispute arose *qua* the ownership and possession of the suit property, which was decided by the Hon'ble Apex Court vide its decisions dated 06.04.2004 & 14.07.2006 wherein the plaintiff promised to indemnify the State Government against any claim or rights of persons in possession of any part of the suit property. It was also pleaded that the plaintiff never disclosed in the previous litigation with the State Government that the defendant(s)-Amir Chand etc. were in possession of the suit property as licensee. On merits, it was specifically denied that the plaintiff permitted Amir Chand to be in possession of a part of the suit property as licensee. It was also denied that house in question was in dilapidated condition. Hence, it was prayed that the suit was not maintainable and thus be dismissed.

[5] On the basis of pleadings of the parties, the learned Civil Judge (Junior Division), Hisar (**hereinafter referred to as "trial Court"**) framed the following issues:-

"1. Whether the plaintiff is land owner/landlord of house property No. F-3/13, Mohalla Qasaban, Gobindgarh Bazar, Hisar? OPP

2. *Whether the license of the defendants and their predecessor has since been revoked and cancelled and now they have no authority to live and occupy the house in question? OPP*
3. *Whether is suit is barred by principle of resjudicata? OPD*
4. *Whether the civil court has jurisdiction to try and entertain the present suit? OPD*
5. *Relief. ”*

[6] The learned trial Court vide judgment and decree dated 04.01.2013 dismissed the suit filed at the instance of appellant-plaintiff while recording that the defendants were not proved to be licensees of plaintiff. It was further held that the claim made by defendants for allotment of suit property remained unsatisfied and even the plaintiff as per his undertaking before the Hon’ble Apex Court failed to indemnify the State against it.

[7] Aggrieved of the judgment and decree passed by the learned trial Court, the plaintiff-Raj Kumar (since deceased) filed first appeal, however, the same also came to be dismissed vide judgment and decree dated 11.07.2017 passed by the learned Additional District Judge, Hisar (**hereinafter referred to as “First Appellate Court”**). Hence the present Regular Second Appeal.

CONTENTION(S):

ON BEHALF OF THE APPELLANT(S)-PLAINTIFF(S):

[8] Impugning the aforementioned judgment and decrees passed by both the Courts below, learned counsel for the appellant(s)-plaintiff(s) submitted that even if the defendants being in possession of a part of the suit property were not proved to be licensees of the plaintiff, a decree for

possession could have been passed in favour of the plaintiff, he being admittedly owner in possession of the same by virtue of deposit of requisite amount in terms of orders dated 06.04.2004 and 14.07.2006 passed by the Hon'ble Supreme Court. Learned counsel thus submitted that merely because, instead a suit for possession based on title, the claim in the plaint was couched as one for grant of possession by way of mandatory injunction, the constructive prayer made on behalf of the plaintiff was for possession of the suit property and the same was required to be granted. It was further contended that the plaintiff being the owner of the suit property, at best, could have been directed to affix the requisite Court fee upon the valuation of the subject property towards grant of possession in his favour.

[8.1] Learned counsel further pointed out that the Courts below erred having non-suited the plaintiff on the ground that he failed to indemnify the State of Haryana as regards the claim of the defendants in terms of the orders passed by the Hon'ble Apex Court. He contended that unless and until the claim of defendants towards any right or interest in the suit property on the basis of their previous possession was duly adjudicated and finalized by the competent authorities, the question of the appellant-plaintiff indemnifying the State did not arise and as such, the findings recorded by the Courts below were liable to be set aside and the suit filed at the instance of appellant-plaintiff was to be decreed.

ON BEHALF OF THE RESPONDENT(S)-DEFENDANT(S):

[9] On the other hand, learned counsel for the respondents-defendants submitted that the judgments and decrees passed by both the Courts below were based on proper appreciation of the pleadings / evidence

available on record and thus, called for no interference. He further pointed towards the concurrent findings of fact recorded by the Courts below to the effect that the defendants were in possession of the suit property and were never proved to be licensees under the plaintiff. Learned counsel thus contended that the prayer for mandatory injunction *qua* the subject property was not maintainable unless any specific claim for possession based on title-ownership was sought by the plaintiff.

[9.1] Learned counsel for the respondents-defendants also contended that at this belated stage, the plaintiff was not entitled to seek possession on the basis of title merely by affixation of Court fee. He further pointed out that unless the claim made by the defendants with respect to the subject property to be allotted to them on the basis of their previous possession was adjudicated upon by the State Government, the plaintiff was not entitled for its possession and hence, no interference was called for with the judgments and decrees by both the Courts below.

No other point / argument had been raised.

DISCUSSION AND REASONING

[10] Having heard learned counsel for the parties and gone through the paper-book / record, I find substance in the submission(s) made on behalf of the appellant(s)-plaintiff(s).

[11] In the present case, both the Courts went on to record that the plaintiff-Raj Kumar (since deceased) was owner of the suit property being its allottee and having paid the requisite amount in terms of the decisions dated 06.04.2004 and 14.07.2006 passed by the Hon'ble Apex Court. It was also recorded that the defendants were in possession of a part of the suit property

marked in the site plan as WXYZD; although claim for possession by way of mandatory injunction was made by the plaintiff while asserting that the defendants through Amir Chand were licensee under the plaintiff. However, the appellant-plaintiff failed to establish the said plea. Be that as it may, it was established on record that the appellant-plaintiff happened to be the owner of the suit property.

[11.1] As such, once a claim for possession was made by the plaintiff, mere fact that it was by way of suit for mandatory injunction and not for possession based on title, was no reason to deny the same in favour of the plaintiff. It is well-settled that the law of procedure is hand maiden of justice and if the technicalities and the substantial justice are pitted against each other, the latter has to be preferred over the former. Thus, in order to do complete and effective justice between the parties, the Courts below were required to adopt a pragmatic approach rather than a hyper-technical one and a decree for possession could have been passed in favour of plaintiff-owner as against the defendants—unauthorized occupants. In this regard, reliance can be placed upon a decision rendered by the Full Bench of Hon’ble Delhi High Court in ‘**Jugal Kishore vs. Des Raj Seth**’ reported as **1968 SCC Online 120** whereby it was held that mere use of the expression “mandatory injunction” in the prayer clause cannot by itself, be conclusive against the relief of possession. If upon a holistic reading of the plaint it becomes evident that the plaintiff is, in substance, seeking possession of the property, it would be open to the Court to treat the suit as one for possession. The relevant portion thereof extracted hereunder:-

“..... It is not disputed before us that while determining the nature of the suit and the relief claimed, the plaint has to be read and construed as a whole

*and it is the substance which is to be the guiding factor. The court has to look at and see in each particular case as to what is the real nature of, the relief claimed and it is for that purpose that the allegations contained in the plaint as a whole have to be examined. Merely because the expression "mandatory injunction" is used in the prayer Clause, cannot always be conclusive against the prayer contemplating a decree for possession, and if reading the plaint as a whole, it becomes clear that the plaintiff is seeking possession of the property, then it would be open to the **Court to hold** the suit to be one for possession. In the case in hand, the plaint contained an averment that the plaintiff had put the defendant in possession of the property in question and on the happening of certain events thereafter, the plaintiff became entitled to get back the possession. **We have accordingly no hesitation** in holding on reading the plaint as a whole that in substance this is a suit for possession and not for a mere mandatory injunction."*

[12] The only difference between the suit for possession by way of mandatory injunction and suit for possession based on title being about the payment of requisite Court fee in terms of the provisions of The Court Fees Act, 1870, thus, instead of non-suiting the plaintiff, the appropriate course would have been to direct the appellant-plaintiff to deposit the same by passing a conditional decree in his favour. This view is also supported by the decision rendered by this Court in the case of '**Hari Singh Saini and others vs. Jai Parkash Bansal and others**' reported as **2019 (1) PLR 431** wherein it was held that even where the suit is couched as one for mandatory injunction, once the plaintiffs are declared to be owners and entitled to possession, the Court is always empowered to direct them to deposit ad valorem court fee on the value of the property and, thereafter, pass a decree for possession. The relevant portion thereof is extracted hereunder:-

"15. In the considered view of this Court, such suits cannot be treated as merely injunction suits particularly when the mandatory injunction is being

sought for on the basis of title and the parties have led their evidence to prove that fact.

16. Although, technically the plaintiffs ought to have filed a suit for possession against the unauthorized occupants, however, once the plaintiffs have been declared to be owners and entitled to possession, the Court is always within its power to direct the plaintiffs to deposit the ad valorem Court fee on the value of the property and consequently, pass a decree for possession.”

[13] Furthermore, no merit can be found with the submission(s) made on behalf of the respondents-defendants that since their claim with respect to the entitlement in the suit property was pending consideration with the State of Haryana, the plaintiff was not entitled for grant of any decree in his favour, especially when he had undertaken to indemnify the State Government towards any claim raised by the respondents-defendants. In this regard, it may be noticed here that unless and until any claim set up by the defendants in the suit property was ascertained, determined and finalized in their favour by the State of Haryana, the question of the plaintiff having satisfied or indemnified the State of Haryana does not arise.

[14] In view of the discussion made hereinabove, the suit filed by the appellant-plaintiff is hereby decreed by granting decree for possession based on title *qua* the subject property in his favour subject to payment of *ad valorem* Court fee before the trial Court within two months from the date of receipt of certified copy of this order.

[15] Consequently, finding merits in the present regular second appeal, the same is **allowed** and the judgments and decrees passed by both the Courts below are hereby set aside. Decree sheet be drawn accordingly.

[16] Since, the main appeal has been decided / allowed, no orders are required to be passed in the pending application(s), if any, and the same shall stand disposed off.

April 10, 2026
'dk kamra'

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>