

BHAGWAN SARUP NAGAR (D) BY LRS

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v.

RAM KISHAN

(Civil Appeal No. 258 of 2009)

JANUARY 16, 2009

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**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

Code of Civil Procedure, 1908 – s. 100 – Second appeal – Case of plaintiff-owner that defendant-licensee not vacating property despite revocation of licence – Suit for injunction, possession of property and mesne profits by plaintiff – Plea of adverse possession by defendant – Dismissal of suit even though holding that plaintiff as owner of property – Suit decreed in favour of plaintiff by first appellate court – Second appeal – Allowed by High Court holding that plaintiff failed to prove his ownership – On appeal held: Conclusions of High Court erroneous – It proceeded as if first appellate court reversed findings as regard ownership and trial court did not consider the documents – Hence, matter remitted to High Court for afresh decision.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 258 of 2009.

From the Judgment and final order dated 26.10.2005 of the High Court of Punjab & Haryana at Chandigarh in Regular Second Appeal No. 2696 of 2000.

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Himanshu Gupta and Shivaji M. Jadhav for the Appellants.

Pradeep Kumar Arya and Chander Shekhar Ashri for the Respondent.

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The Judgment of the Court was delivered by

A **DR. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Punjab and Haryana High Court allowing the appeal filed by the respondent. The appeal was filed under Section 100 of the Code of Civil Procedure, 1908 (in short the 'CPC'). Appellant as plaintiff has filed a suit for mandatory injunction with a prayer that the defendant-respondent be directed to ensure possession to him of the demised premises description of which was given in the plaint. He also claimed Rs.3,900/- towards mesne profit for use and occupation of the property by the respondent. It was the case of the plaintiff that he was the owner of the house and the defendant was his cousin and he had inducted him as a licensee in two rooms. Thereafter, when the defendants started misbehaving, he issued a notice to him on 27.9.1991 revoking his licence. Since he failed to vacate the portion of the house in dispute, mesne profit was claimed and the occupation of the demised property was also claimed. The defendant took the plea that the property was exclusively in continuous peaceful possession of the defendant for last more than 50 years as its owners without paying rent to anybody including the plaintiff. It was also denied that he was ever inducted as a licensee. Five issues were framed by the trial court. It is to be noted that replication was filed by the plaintiff. After considering the evidence brought on record it was held that the plaintiff was the owner of the property in dispute but all the issues were decided against him. The issues were as follows:

1. Whether the plaintiff is entitled for the relief of injunction as alleged in the plaint? OPP.
2. Whether the plaintiffs entitled to recover Rs.3,900/- as mesne profits as alleged in the plaintiff? OPP.
3. Whether the plaintiff has no *locus standi* to file the present suit? OPD.

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4. Whether the suit of the plaintiffs not maintainable? OPD. A

5. Whether the plaintiff has no cause of action to file the present suit? OPD.

3. The finding of the trial court was reversed by the First appellate court and the suit filed by the plaintiff was decreed. When the second appeal was admitted, the following question was formulated: B

"Whether the learned lower Appellate Court could reverse the findings without considering the documents Ex.D1, D2 and D3." C

4. The High Court came to hold that the appeal was bound to succeed as the plaintiff has failed to prove his ownership. Mere fact that adverse possession has been claimed by the defendant paled into insignificance and no benefit of the same can be given to the plaintiff. D

5. In support of the appeal learned counsel for the appellant submitted that the approach of the High Court was clearly erroneous. It is not a fact that Exh. D1 to D7 were not considered. In fact the trial court observed as follows: E

"Now coming to with regard of creation of relationship of Plaintiff and Defendant as licensor and licensee between the parties, nothing is stated by the Plaintiff in his pleadings when Defendant was inducted as a licensee in the portion of the House No. 5912-13 whereas in his statement as PW-1 he has stated in the cross examination that Defendant was inducted into the Property as licensee about six years earlier. Whereas from the perusal of the oral as well as documentary evidence produced by the Defendant on the file it goes to show that portion of the house has been coming in possession initially of Ghasi Ram father of the Defendant and after his death in possession of the Defendant since 1931. These facts F G H

A stand proved from the copy of the resolution of the
committee dated 19-8-31 Ex. D-1 vide which application
of the Defendant for opening the slaughter house in House
N0.5912-13 was rejected. Thus it shows that on 19.8.31
B father of he Defendant was in possession of the house on
19.8.31. Similarly Defendant has filed a loan application
Ex. D-2 before the secretary Punjab Khadi & Village
Industries Board, Chandigarh for carrying on a business
under the Tanners production Co. Op. Society Ltd. In this
C house. Central Sales tax receipt Ex. D-3, electricity bills
since 1984 on wards in the name of Ghasi Ram Show the
continuous possession of the Defendant in portion of the
house. It is pertinent to mention here that apart form the
D bar statement of Plaintiff there is not an iota of supporting
evidence of any person from the locality in order to prove
that Defendant was inducted as a licenses about 5/6 years
earlier. Neither any suggestion was put to the Defendant
in cross-examination regarding the creation of the license
about 5/6 years earlier. It is well settled that suggestion not
E put up on any point to the Defendant regarding the matter
in dispute. The claim of the Defendant regarding the denial
of the relationship as licensor and licensee is deemed to
be admitted."

6. Further it appears that the High Court proceeded on an
erroneous impression as if the First appellate court has
F reversed the finding regarding ownership. As a matter of fact
the First Appellate Court had concurred with the finding.

7. It is to be noted that the High Court's observations
regarding non-consideration of Exh.D1 to D7 by the trial court,
G are as follows:

"Similarly while deciding question of title, trial court
has not said a word about the documents Ex.D1 to D7,
though D1 and D2 were earlier to the filing of the suit by
the respondent in favour of the appellant was not proved
H on record."

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8. The quoted portion of the trial court's judgment shows that the conclusions of the High Court are erroneous. A

9. As noted above the First Appellate Court also held that it was established that the plaintiff is the owner of the property in dispute. The First Appellate Court observed as follows: B

"The defendant in the written statement claimed his continuous long possession over the house for the last 56 years without paying any rent. Meaning thereby, the defendant has taken a plea of adverse possession. In other words the ownership of the plaintiff stands admitted by the defendant. So from every angle it stands proved that the plaintiff is the owner of the property in dispute." C

10. Above being the position the High Court has fallen into grave error by overlooking the aforesaid conclusions and in allowing the second appeal. In the aforesaid background we are of the view that the second appeal needs to be heard afresh by the High Court. The matter is, therefore, remanded to the High Court for a fresh consideration in accordance with law. D

11. Appeal is allowed. No costs. E

N.J.

Appeal allowed.