

Sant Lal Jain

Vs

Avtar Singh

Civil Appeal No. 216 of 1984

(Syed M. Fazal Ali, A. Varadarajan JJ)

12.03.1985

JUDGMENT

A. VARADARAJAN, J -

1. This appeal by special leave is by the plaintiff against the reversing judgment of the Punjab and Haryana High Court in R.S.A. No. 126 of 1979. The trial court had dismissed the suit but the learned Additional District Judge, Patiala allowed the plaintiff's appeal and decreed the suit.
2. The plaintiff/appellant's case was that he had taken on lease under a lease-deed dated August 26, 1963 for a term of 10 years a plot of land measuring 51' x 118' situate near the Army Headquarters Lower Mall, Patiala for M/s Jain Motors from its owner Lt.-Col. Sadan Singh. He was only a partner of M/s Jain Motors in 1963, but later became its sole owner in 1967. The defendant/respondent took from the appellant on licence of one year under a deed dated December 10, 1969 the suit shed for carrying on the work of repair of motors, tractors, etc. But since he did not vacate the shed after the expiry of the period he terminated the licence and filed the suit on February 15, 1973 for a mandatory injunction directing him to vacate the premises. The respondent opposed the suit contending that the appellant sublet to him a plot of land in 1966-67 and he has raised a new construction thereon and is carrying on workshop business therein since then. The further contended that the relationship between the parties was that of landlord and tenant and that the suit for mandatory injunction was not maintainable.
3. The trial court found that M/s Jain Motors were the lessees and that the respondent became a subtenant of a piece of land and constructed the suit shed thereon and that the suit for mandatory injunction is not maintainable and dismissed the suit. In the appeal the learned Additional District Judge set aside the trial court's findings recorded in favour of the respondent and found that no rent is mentioned either in the document executed by the respondent in favour of the appellant or in the written statement and no rent receipt was produced by the respondent, and that the relationship between the parties was only one of licensor and licensee. On the question of delay in filing the suit the learned Additional District Judge found that the parties remained busy in fighting out criminal cases till the end and that the present suit had been filed thereafter and there had been no undue delay and also that there was no challenge to the trial court's finding that the respondent had not put up any construction of his own and held that the suit for mandatory injunction against the licensee is maintainable. On these findings he allowed the appeal and decreed the suit, directing the respondent to deliver vacant possession of the shed in dispute to the appellant.
4. In the second appeal the respondent filed an application for receiving as additional evidence a sale-deed dated August 21, 1979 whereby he claimed to have purchased the entire property from its

original owner. The High Court called for a finding in that regard from the trial court which thereupon found that the respondent has purchased the property from its original owner by that sale-deed. It was contended in the High Court that in view of that sale, it is not open to the appellant to contend that the respondent in whom the title to the property has come to be vested after the date of the suit, is liable to be ejected on the revocation of the licence granted to him by the appellant. On the other hand, it was contended for the appellant that the fact that the respondent had purchased the property from its owner subsequent to the grant of the licence in favour of the respondent does not make any difference to the appellant's claim for recovering possession of the suit shed and that it is obligatory on the respondent to first surrender possession of the property after the licence had been revoked and then seek his remedy, according to law, on the basis of the title claimed by him. It was further contended that in view of the provisions of Section 13 of the East Punjab Rent Restrictions Act, 1949, the appellant who was the tenant of the property under its original owner cannot be dispossessed except in accordance with the provisions of that Act.

5. The learned Single Judge of the High Court rejected the appellant's contention that his rights under the lease by the original owner cannot be interfered with except in accordance with the provisions of the said Act, observing that from the decisions referred to by him and the provisions of Section 116 of the Indian Evidence Act, it is clear that after the commencement of the tenancy or the licence a tenant or licensee who has purchased the property from its original owner cannot be evicted from that property on the basis of the lease or licence. He rejected the contention that the present suit for a mandatory injunction directing the respondent to vacate and hand over possession of the suit shed is in effect a suit for possession and he allowed the second appeal and set aside the judgment and decree of the learned Additional District Judge and restored the trial court's decree dismissing the suit.

6. Now the parties are bound by the following factual findings recorded by the learned Additional District Judge in the first appeal, namely : (1) that the appellant who had become the sole proprietor of M/s Jain Motors in 1967 though at the time of the lease of the property by the original owner Lt.-Col. Sadan Singh to M/s Jain Motors in 1963 he was only one of its partners, was the lessee of the property; (2) that the respondent had become a licensee of the suit shed under the appellant when the appellant was in possession of the whole of the demised premises including the suit shed as tenant under the original owner; (3) that the licence in favour of the respondent had been revoked before the institution of the present suit and (4) that subsequent to the decision in the first appeal on December 7, 1978, the respondent had purchased the entire property from the original owner by a sale-deed dated August 27, 1979. In these circumstances, there is no merger of the lease of the whole property by its original owner in favour of the appellant by reason of the sale of the entire property by the original owner in favour of the respondent or of the licence given by the appellant to the respondent which had been revoked prior to the date of the suit. The lease in favour of the appellant continues, and it is not disputed that under the Act of 1949 referred to above, even the tenant of a vacant land in Patiala town cannot be evicted therefrom except in accordance with the provisions of that Act. In *K. K. Verma v. Union of India* (AIR 1954 Bom 358 : ILR 1954 Bom 950 : 56 Bom LR 308), Chagla, C.J. presiding over a Division Bench has observed that in India a landlord can only meet his erstwhile tenant by recourse to law and by obtaining a decree for ejection. In *Malika Singh v. Diana* (AIR 1964 J&K 99 : 1964 Kash LJ 141), it has been observed that the principle that once a licensee always a licensee would apply to all kinds of licences and that it cannot be said that the moment the licence is terminated, the licensee's possession becomes that of a trespasser. In that case, one of us (Murtaza Fazal Ali, J. as he then was) speaking for the Division Bench has observed :

After the termination of the licence, the licensee is under a clear obligation to surrender his possession to the owner and if he fails to do so, we do not see any reason why the licensee cannot be compelled to discharge this obligation by way of a mandatory injunction under Section 55 of the Specific Relief Act. We might further mention that even under the English Law a suit for injunction to evict a licensee has always been held to be maintainable.

... where a licensor approaches the court for an injunction within a reasonable time after the licence is terminated, he is entitled to an injunction. On the other hand, if the licensor causes huge delay, the court may refuse the discretion to grant an injunction on the ground that the licensor had not been diligent and in that case, the licensor will have to bring a suit for possession which will be governed by Section 7(v) of the Court Fees Act.

7. In the present case it has not been shown to us that the appellant had come to the Court with the suit for mandatory injunction after any considerable delay which will disentitle him to the discretionary relief. Even if there was some delay, we think that in a case of this kind attempt should be made to avoid multiplicity of suits and the licensor should not be driven to file another round of suit with all the attendant delay, trouble and expense. The suit is in effect one for possession though couched in the form of a suit for mandatory injunction as what would be given to the plaintiff in case he succeeds is possession of the property to which he may be found to be entitled. Therefore, we are of the opinion that the appellant should not be denied relief merely because he had couched the plaint in the form of a suit for mandatory injunction.

8. The respondent was a licensee, and he must be deemed to be always a licensee. It is not open to him, during the subsistence of the licence or in the suit for recovery of possession of the property instituted after the revocation of the licence to set up title to the property in himself or anyone else. It is his plain duty to surrender possession of the property as a licensee and seek his remedy separately in case he has acquired title to the property subsequently through some other person. He need not do so if he has acquired title to the property from the licensor or from someone else lawfully claiming under him, in which case there would be clear merger. The respondent has or surrendered the possession of the property to the appellant even after the termination of the licence and the institution of the suit. The appellant is, therefore, entitled to recover possession of the property. We accordingly allow the appeal with costs throughout and direct the respondent to deliver possession of the property to the appellant forthwith failing which it will be open to the appellant to execute the decree and obtain possession.

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