



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1977-2022 (O&M)

Surinder Singh

. . . . Appellant

Vs.

Bhupinder Singh and another

. . . . Respondents

RSA-2042-2023 (O&M)

Bhupinder Singh and another

. . . . Appellants

Vs.

Surinder Singh

. . . . Respondent

Date of Decision:01.04.2025

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by: - Mr. Raman Mohinder Sharma, Advocate,
for the appellant (in RSA-1977-2022).

Ms. Prakriti Kashyap, Advocate, for
Mr. Vivek Sethi, Advocate,
for the appellants (in RSA-2042-2023)

DEEPAK GUPTA, J.

Suit for possession filed by plaintiffs-Bhupinder Singh and his wife Gurjeet Kaur (*respondents in RSA No.1977 of 2022 and appellants in RSA No.2042 of 2023*) was partly decreed by the trial Court of Id. Additional Civil Judge (Sr. Divn.) Patiala, vide judgment dated 01.02.2017. Both the parties went in appeal. Plaintiffs were aggrieved by the denial of the relief relating to recovery of the mesne profit; whereas defendant Surinder (*appellant in RSA No.1977 of 2022 and respondent in RSA No.2042 of 2023*) filed the appeal against the decree of possession and permanent injunction. Both the appeals were disposed of together by Id. Additional District Judge, Patiala and dismissing the same on 25.10.2021.

2. Against the abovesaid dismissal of their respective appeals by the First Appellate Court, both the parties have now approached this Court by way of the present two regular second appeals.

3. Admittedly, suit property is owned by plaintiff No.1-Bhupinder Singh. He filed the suit through his wife and guardian Smt. Gurjeet Kaur, as it was contended that said Bhupinder Singh was mentally retarded person. Smt. Gurjeet Kaur was appointed his guardian by the court vide order dated 27.04.2004 and was also impleaded as plaintiff No.2. It was claimed by the plaintiffs that defendant, a resident of house No.100 in Guru Nanak Nagar, Tripuri, Patiala is doing the business of scrap at his House No.88-89, Jhill Road, Patiala. Being in need of some place for storage of scrap for some days, he made request to plaintiffs. His request was accepted by plaintiff No.1 through plaintiff No.2 to accommodate him being a neighbour and he was allowed to use the suit property measuring 409 sq. yards for the period of two months in the December 2010. After the expiry of this period, defendant was asked to hand over the vacant possession of the suit property, but he put off the matter on one or the other excuse. However, defendant did not vacate the suit property till date and rather started claiming himself to be the tenant. The license of the defendant was revoked in February 2011 and thus, he is now alleged to be trespasser and so, not entitled to retain the property. Plaintiffs further claimed that they are also suffering financial loss @ ₹3000/- per month from December 2010 onwards and so were entitled to recovery of mesne profit @ ₹3000/- per month i.e. totaling ₹1,08,000/- along with interest @ 18% per annum amounting to ₹57,320/-. Legal notice dated 30.04.2013 was also served upon the defendant, but he failed to vacate the property and hence the suit.

4. Defendant contested the suit by raising the preliminary objection that suit was not maintainable and that no notice for alleged termination of license had been issued to him; that order dated 27.04.2004, whereby plaintiff No.2 was appointed as guardian of plaintiff No.1 had been obtained by playing fraud upon the Court, as plaintiff No.1-Bhupinder Singh

was a competent person and not mentally retarded person. Defendant denied to have taken the suit property for storage purpose in December 2010 and claimed that it is a godown, which was taken by him on rent in the year 1998 and that an amount of ₹5000/- was given as advance and the rent was agreed to be ₹500/- per month, which was enhanced to ₹1700/- per month in January 2011, which he used to pay to plaintiff No.1 but neither rent note was executed nor any rent receipt was obtained by him. It was also alleged by the defendant that since plaintiff had threatened to forcibly dispossess him to increase the rent to ₹3000/- per month, so he (*defendant*) had filed a suit for permanent injunction to restrain the plaintiffs from interfering in his possession, in which the interim stay was granted to him. With this stand and controverting all other averments of the plaint, defendant prayed for dismissal of the suit.

5. Necessary issues were framed. Evidence produced by the parties was taken on record.

6. Vide judgment dated 01.02.2017, the trial Court partly decreed the suit for possession of the suit property and directed the defendant to hand over the vacant possession of the same to the plaintiffs within a period of one month. Defendant was also restrained from alienating, disposing of, letting out, mortgaging or transferring the suit property or from causing any type of unwanted damage to the suit property or to the plaintiffs in any manner. However, plaintiffs were held to be not entitled to the relief regarding the recovery of mesne profit along with interest as was claimed by them.

7. As already noticed that appeal filed by the defendant against the abovesaid judgment was dismissed by the First Appellate Court; whereas, the appeal filed by the plaintiffs for grant of mesne profit was also dismissed by the First Appellate Court, by way of the common judgment dated 25.10.2021.

8. Now both the parties are before this Court against the aforesaid judgment.

9. This Court has considered submissions of learned counsel for both the parties and has appraised the paper-book carefully.

10. The only plea raised by Learned counsel for the defendant-appellant in RSA No.1977 of 2022 is that plaintiff No.1-Bhupinder Singh is not mentally retarded person and the suit filed through his wife was not maintainable. It is further submitted that said plaintiff No.1-Bhupinder Singh did not enter the witness box and as such, the suit was liable to be dismissed. It is also contended that defendant was the tenant on the suit property and so, he cannot be ejected except in due course of law.

11. On the other hand, learned counsel for the plaintiffs i.e. appellants in RSA-2042-2023 contend that possession of the defendant on the suit property is as a trespasser and therefore, the relief of recovery of mesne profit has been wrongly declined by the Courts below.

12. In RSA-2042-2023, an application with its CM No.6999-C of 2023 has also been moved under Section 5 of the Limitation Act to condone the delay of 269 days in filing this appeal.

13. As both the parties are appearing before this Court in their respective appeals, therefore, notice of motion is issued to both of them and the same has been accepted by both the opposite counsel i.e. respondent of each appeal.

14. After hearing the contentions of both the sides, this Court does not find any merit in appeal filed by the defendant i.e. in RSA-1977-2022. It has been found by the Courts below that plaintiff No.2 being the wife of plaintiff No.1 had been appointed as his guardian vide order dated 27.04.2004, passed by the Court of Id. Additional District Judge, Patiala, after going through the entire facts of the case, thereby declaring Bhupinder Singh as mentally ill person and unable to perform his duties. Said fact was

further corroborated from copy of judgment dated 01.03.2012 Ex.PX passed by this High Court, whereby competent medical board was constituted to ascertain the medical condition of Bhupinder Singh-Plaintiff No.1 and the medical board had opined that said Bhupinder Singh was unfit for service and was declared medically unfit for service and then, his wife was appointed as his guardian, holding that Bhupinder Singh was incapable of defending himself.

15. Thus, there was ample evidence on record before the Court concerned so as to hold that Bhupinder Singh-plaintiff No.1 was mentally retarded person and was suffering from brain disorder since 1997 and that his wife-plaintiff No.2 was legally authorized to file the suit.

16. Defendant relied upon some photographs to show that plaintiff No.1 was seen driving the scooter. However, it is not proved that when that photograph was taken. Even otherwise, in view of the judicial verdicts as referred by the Courts below, there can be two opinions in holding that plaintiff No.1 was mentally retarded person and as such, suit filed through his guardian/wife Gurjeet Kaur was maintainable.

17. Even otherwise, for the sake of arguments, even if it be assumed that plaintiff No.1 was competent to file the suit, admittedly, he is the owner of the suit property. In order to seek possession of the suit property, plaintiff No.2-Gurjeet Kaur, who is the wife of plaintiff No.1 has appeared in the witness box and has proved the case. As per Section 120 of the Indian Evidence Act, a spouse is a competent witness for the other spouse. For this reason also, the suit is held to be maintainable.

18. Moving ahead, defendant claimed to be tenant on the suit property, but failed to produce any evidence in support of this contention. Neither any rent note was produced on file nor any rent receipt was produced on record. Except for the oral evidence relied by the defendant, there was no cogent evidence on record to prove that he was the tenant. As such, the Courts below rightly held that he was not the tenant on the suit

property and rather, he was a trespasser thereon, as his license had already been revoked by the plaintiffs. This Court does not find any ground whatsoever to interfere in the concurrent findings of facts as recorded by the Courts below in this regard.

19. As such, the suit for the decree of possession of the suit property has been rightly decreed by the Courts below and the appeal filed by the defendant has been rightly dismissed by the First Appellate Court. Consequently, **RSA-1977-2022**, as filed by the defendant, is hereby **dismissed**.

20. Coming to CM-6999-2023 for condoning the delay of 269 days in filing the RSA-2042-2023, after perusing the grounds mentioned therein, supported by the affidavit of the appellant-plaintiff No.2-Gurjeet Kaur, said delay of 269 days in filing the appeal is hereby condoned.

21. Coming to the merits of the above appeal, the suit was filed on 30.11.2013. Defendant was claimed to have been given the possession of the suit property for a period of two months in December 2010 and the said license was revoked in February 2011. However, defendant failed to vacate the suit property. Plaintiffs claimed to have been suffering financial loss @ ₹3000/- per month and so prayed for mesne profit at this rate for a period of three years i.e. amounting to ₹1,08,000/- along with interest.

22. As already noticed that though defendant claimed himself to be tenant on the suit property, but failed to prove the same. According to defendant, plaintiff wanted to increase the rent to ₹3000/- per month, as earlier it was agreed to be ₹1700/- per month, but he failed to prove this stand. However, this assertion of the defendant would reveal that at least in January 2011, the rent of the similar premises was not less than ₹3000/- per month. The Courts below have wrongly declined the relief of mesne profit to the plaintiffs at the said rate. Once it was found that defendant was trespasser on the suit property, plaintiffs were entitled to the decree for mesne profit.

23. As such, suit of the plaintiffs for grant of mesne profit is decreed and the appeal filed by the plaintiffs bearing **RSA-2042-2023** is **allowed**. A decree for recovery of ₹1,08,000/- i.e. mesne profit @ ₹3000/- per month for the period of three years prior to the filing of the suit, along with interest @ 12 % per annum, is hereby passed in favour of the plaintiffs-appellants of RSA No.2042-2023 and against the defendant. From the date of institution of the suit till the decision of the present appeal, plaintiffs will be further entitled to the grant of mesne profit at the said rate of ₹3000/- per month with interest @ 6 % per annum till actual payment. Defendant is granted a period of two months i.e. upto 31.05.2025 so as to vacate the premises and for this period, he will have to pay ₹5000/- per month as mesne profits. It is made clear that in case defendant does not vacate the suit property upto 31.05.2025 and plaintiffs are compelled to file the execution to seek the possession, the defendant will be liable to pay the mesne profit @ ₹50,000/- per month from 01.06.2025 onwards till the date of delivery of actual physical possession of the suit property to the plaintiffs.

24. The appeal [**RSA-2042-2023**] filed by the plaintiffs is allowed accordingly in above terms.

25. Pending application(s), if any, shall stand disposed of.

A photocopy of this order is placed on the file of another connected case.

01.04.2025

Vivek

(DEEPAK GUPTA)
JUDGE

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
Yes