



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA-215-2020 (O&M)
Reserved on : 18.03.2025
Date of Decision : 08.04.2025**

Krishan Kumar Swami & Anr ... Appellant(s)

VERSUS

Kabir Bhawan Sewa Samiti & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. S.S. Nain, Advocate for the appellants.

ALKA SARIN, J.

CM-547-C-2020

1. For the reasons mentioned therein, the application seeking condonation of delay of 178 days in refiling the appeal is allowed and the delay of 178 days in refiling the appeal is condoned.

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2. The present appeal has been preferred by the plaintiff-appellants challenging the judgment and decree dated 20.07.2016 passed by the Trial Court and the judgment and decree dated 28.09.2018 passed by the First Appellate Court whereby their suit for permanent injunction has been dismissed.

3. Brief facts relevant to the present *lis* are that the plaintiff-appellants filed the suit averring that they were in possession of the shop in dispute as tenants under the defendant-respondent No.1 through its President, defendant-respondent No.2. As per the plaintiff-appellants the

tenancy had begun around five years ago, and the rent was ₹1,000/- per month. The plaintiff-appellants had allegedly started the business of building material under the name and style of Shiv Building Material Carrier and an electricity connection was running in the shop in dispute in the name of the plaintiff-appellant No.2 and the electricity bills were regularly paid by the plaintiff-appellants. As per the plaintiff-appellants they used to pay rent @ ₹1,000/- per month in cash yearly but no receipt was issued by the defendant-respondents and w.e.f. 1.1.2008 the rent was paid from the bank account in the bank account of the defendant-respondent No.1 and stood paid upto 30.04.2011. According to the plaintiff-appellants there was a dispute inter-se amongst the defendant-respondents and on 31.05.2011 they were tried to be forcibly dispossessed from the shop in dispute. Hence, the suit for permanent injunction. Two sets of written statements were filed by the defendant-respondents. While defendant-respondent Nos.1 and 2 contended that the arrears of rent had been received in Court and that the suit had been filed at the instance of defendant-respondent Nos.3 and 4. On the other hand the defendant-respondent Nos.3 and 4 in their written statement took the stand that the suit was a result of collusion between the plaintiff-appellants and the defendant-respondent Nos.1 and 2 just to grab the shop in dispute which was never given on rent to the plaintiff-appellants and neither was any rent ever received by the defendant-respondent Nos.3 and 4.

4. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiffs are entitled for the decree of permanent injunction as prayed for ? OPP

2. Whether the suit of the plaintiffs is not maintainable ? OPD
3. Whether the plaintiffs have no locus standi to file the present suit ? OPR
4. Whether the plaintiffs have got no locus standi to file the present suit ? OPD
5. Whether the suit of the plaintiffs is under valued for the purposes of court fee and jurisdiction ? OPD
6. Whether the plaintiffs are estopped to file the present suit by his own act and conduct ? OPD
7. Whether the plaintiffs have concealed the true and material facts from the court ? OPD
8. Relief.

5. The Trial Court vide judgment and decree dated 20.07.2016 dismissed the suit holding inter-alia that the plaintiff-appellants had not been able to prove their possession over the shop in dispute. Aggrieved by the decision of the Trial Court, an appeal was preferred by the plaintiff-appellants which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 28.09.2018. Hence, the present regular second appeal by the plaintiff-appellants.

6. The learned counsel for the plaintiff-appellants has contended that both the Courts have erred in dismissing the suit of the plaintiff-appellants. It is urged that the plaintiff-appellants were in possession of the shop in dispute as tenants which stood established by the photographs and the electricity bills. It is contended that the plaintiff-appellants had even

tendered the arrears of rent in Court which were accepted by the defendant-respondent Nos.1 and 2 and therefore the suit deserved to be decreed.

7. Heard learned counsel for the plaintiff-appellants and perused the record.

8. In the present case both the Courts have held that the plaintiff-appellants failed to prove their possession over the shop in dispute. Though learned counsel for the plaintiff-appellants had drawn the attention of the Court to the electricity bills (Ex.P3 and Ex.P4) in their name, however, a perusal of the same shows that there is no mention of the premises in the said bills. The said electricity bills could pertain to any premises and there is nothing on the record to link them with the shop in dispute. No official from the electricity department was examined to establish that the electricity meter pertaining to the said electricity bills was installed in the shop in dispute. Similar is the situation with the photographs (Ex.P1 and Ex.P2) relied upon by the counsel for the plaintiff-appellants. No doubt the plaintiff-appellants tendered the arrears of rent before the Rent Controller on 07.05.2012 which was accepted by defendant-respondent No.2, but the same would not establish their possession over the shop in dispute as on 01.06.2011 when the present suit was filed. Moreover, the site plan (Ex.D2) shows the position of the shop in dispute and the premises where the plaintiff-appellants are running their business. The plaintiff-appellants produced no site plan on record and the only site plan on record (Ex.D2) lends credence to the stand taken by defendant-respondent Nos.3 and 4. In the present case there is no credible evidence available on the record which would prove the possession of the plaintiff-appellants over the shop in dispute and in the absence of their possession being held to being proved, no

decree of permanent injunction can be passed in their favour. Learned counsel for the plaintiff-appellants has failed to point out as to how the concurrent findings recorded by both the Courts are erroneous or perverse. No cogent and reliable evidence has been shown to the Court by the learned counsel which would establish that the plaintiff-appellants were in possession of the shop in dispute. This Court finds no reason to differ from the concurrent findings returned by both the Trial Court and the First Appellate Court.

9. No other point was argued.

10. In view of the discussion above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.04.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO