

**In the Court of Mehak Sabharwal,
Additional Civil Judge (Senior Division), Sultanpur Lodhi
(UID No.PB0385)**

-.....-

CNR No. PBKPB00000732019

Case No. CS/58/2019



Presented on : 27-02-2019

Registered on : 27-02-2019

Decided on : 11-10-2023

Gian Singh son of Hazara Singh, resident of village Nawan Pind Donewal, Tehsil Shahkot, District Jalandhar.

-----Plaintiff

Versus

Kulwant Singh wife of Sucha Singh, resident of village Ugrupur (Dalla), Tehsil Sultanpur Lodhi, District Kapurthala.

-----Defendant

Suit for Mandatory Injunction directing the defendant to vacate and hand over the vacant possession of the house situated within the red line of village Ugrupur (Dalla) Tehsil Sultanpur Lodhi, District Kapurthala measuring 7 marla comprising two rooms, kitchen, bathroom and court yard as fully depicted in the site plan enclosed and bounded as under:-

East: Street and Plot of Gurdeep Singh West: earlier Gali/plot of Sukhchain Singh.

North: House of Bhagat Ram now Mohinder

Ram South earlier Street/Gurdeep.

Or if for some reason this Hon'ble court comes to the conclusion that the plaintiff is not entitled to relief of mandatory injunction then in the alternative suit for possession of the same.

AND for recovery of use and occupation of the aforesaid house at the rate of RS 5000 per month from the date of filing the present suit till actual payment thereof.

AND Suit for permanent injunction restraining the defendant from making any addition, alteration demolition or raising any sort of construction in any manner whatsoever and forever.

-00000-

Present:- Sh. IS Thind, Advocate, counsel for the plaintiff.
Sh. JS Sandha, Advocate, counsel for the defendant.

JUDGMENT:-

1. Present suit has been filed by plaintiff, seeking relief of mandatory injunction, possession, recovery and suit for permanent injunction on the ground that the site underneath the house in dispute was purchased by plaintiff vide agreement dated 20.03.2012 from the previous owner Mohinder Lal and Pran Nathh, who had purchased the property which was in the shape of old dilapidated house vide sale deed dated 07.11.1967 which could not be executed as the land is situated

within red line as such agreement regarding delivery of possession with all rights was executed and plaintiff came in possession thereof as owner. It is stated that after coming into possession of the said area, land underneath the suit property, plaintiff raised construction in December 2013. It is stated that defendant is mother of daughter-in-law of plaintiff namely Harpreet Kaur, who was previously married with son of plaintiff namely Daljit Singh, who unfortunately expired and after his death, she was remarried with the younger son of plaintiff namely Ranjit Singh. It is averred that daughter-in-law of plaintiff had one child from previous marriage and two children from second marriage with Ranjit Singh and said son of plaintiff is residing abroad and has taken the daughter-in-law of plaintiff and her children abroad and now she is also residing separately from her son. It is stated that defendant and her husband were not having any place to reside as such on their request, they were accommodated in the said newly constructed house by the plaintiff temporarily purely as a licensee only, on account of close relationship. It is further averred that defendant had obtained the electric connection in her name and water connection on the basis of said license. Thereafter, on account of non-payment of electricity charges and water charges both the said connections were disconnected. It is stated that defendant is left with no right, title or interest in the suit property. After leaving the said property, defendant is residing in the village elsewhere and not in the suit property. Now the defendant with malafide intention and ulterior motive has filed the suit for permanent injunction titled as “Kulwant Kaur Vs. Gian Singh” on wrong facts. Before shifting the suit property, defendant was residing at Jalandhar on rented accommodation and were

accommodated for short period purely on account of humanitarian ground with no other rights. As such defendant is required to hand over the possession of the suit property to the plaintiff. It is stated that one week prior to filing of the suit, plaintiff approached defendant and requested her to vacate and hand over the house in dispute, but, she refused to do so and rather threatened to demolish the house to make addition and alteration thereon for which she has got no right whatsoever. Hence, the present suit.

2. Upon notice, defendant appeared and filed written reply by taking objections of maintainability, locus-standi, cause of action, estoppel, suppression of true facts from the Court. It was pleaded by the defendant that the disputed house/property, as fully detailed in head-note of plaint, is situated within lal lakir of village Ugrupur. It is stated that earlier, the suit property was in possession of father-in-law and husband of defendant. After marriage, defendant came in joint possession of suit property with her husband and father-in-law. After death of husband and father-in-law, defendant was in exclusive possession over the suit property. It is stated that in the year 2012, defendant constructed two rooms, kitchen, bathroom and remaining portion court yard for her residence by spending huge amount from her own pocket. Earlier an electric meter is running in the name of plaintiff over the suit property and water supply connection to suit property is also in the name of plaintiff. It is denied that plaintiff has purchased the suit property vide an agreement dated 20.03.2012 and the same is forged and fabricated document. Mohinder Singh and

Pran Nath neither owned the suit property nor they have any concern or right to transfer suit property. Plaintiff has got no right, title or concern with the suit property. In the year 2017, plaintiff tried to take forcible possession of the suit property regarding this Kulwant Kaur has filed civil suit titled as “Kulwant Kaur Vs. Gian Singh” which has been decreed in her favour vide judgment and decree dated 18.03.2019. Rest of the contents of plaint were denied being wrong and a prayer was made by the defendant for dismissal of suit.

3. On the basis of rival pleadings of parties, following issues were framed by this Court on 08.07.2019.

1. Whether the plaintiff is entitled to the relief of mandatory injunction, as prayed for. OPP
2. If issue No.1 is not proved, then in the alternative, plaintiff is entitled to the relief of possession. OPP
3. Whether plaintiff is entitled to recover Rs.5,000/- for use and occupation of the aforesaid house. OPP
4. Whether plaintiff is entitled to the relief of permanent injunction, as prayed for. OPP
5. Whether the suit is maintainable in the present form. OPP
6. Whether plaintiff has got locus standi or cause of action to file the present suit. OPP
7. Whether plaintiff has not come to the Court with clean hands and has suppressed the material facts, if so, its effect. OPD

8. Relief.

4. In order to prove his case, plaintiff, examined Beant Singh Namberdar as PW1, who deposed vide affidavit Ex.PW1/A alongwith documents Ex.P1 and Ex.P2, Tarsem Singh has been examined as PW2, who deposed vide affidavit Ex.PW2/A alongwith documents Ex.P1 and Ex.P2, plaintiff Gian Singh has been examined as PW3, who deposed vide affidavit Ex.PW3/A alongwith documents Ex.P1 and Ex.P2, Narinder Singh has been examined as PW4, who deposed vide affidavit Ex.PW4/A. Surjit Singh has been examined as PW5, who deposed that affidavit Ex.P2 was attested by him on which he identified his stamp and signatures. Tejwant Singh has been examined PW6 (inadvertently numbered as PW7), who brought the summoned record pertaining to sale deed dated 07.11.1967 qua the house and tendered copy of same as Ex.PW7/A and the endorsement on its back as Ex.PW7/B. Documents Ex.PX/1, Ex.PX/2 and Ex.PX/3 were tendered into the evidence of plaintiff.

5. To rebut the evidence of plaintiff, defendant Kulwant Kaur stepped into the witness box as DW1, who deposed vide affidavit Ex.DW1/A alongwith documents Ex.DW1/1 to Ex.DW1/24.

6. In rebuttal evidence, no evidence has been led by the plaintiff.

7. I have heard Sh. IS Thind, Advocate, counsel for the plaintiff, who has argued that plaintiff had purchased the suit property falling in lal lakir vide an agreement dated 20.03.2022 and he had purchased the same from Mohinder Lal and Pran Nath, who had purchased the same by way of sale deed dated 07.11.1967 and when plaintiff purchased the same, it

was in dilapidated condition. He argued that plaintiff had constructed the same. He further argued that defendant has no right or concern with the suit property as defendant No.1 is mother of daughter in law of plaintiff, who is residing in UK and now his son and daughter in law are living separately. He argued that in a previous litigation, defendant had stated this fact that she belongs to village Dalla, now residing at village Nawanpur Dona. He argued that all the documents placed on record by defendants, about her possession i.e. electricity bill are of recent date i.e. date after plaintiff had put her in possession of the suit property. He argued that in view of the evidence led by plaintiff, suit be decreed.

On behalf of defendant, Sh. JS Sandha, Advocate, has argued that defendant is the owner of the suit property as she is residing over the same since long and property falls within lal lakir. He argued that possession is the proof of ownership in such property, and since the suit property falls within lal lakir the ownership of defendant is proved, so accordingly suit of plaintiff be dismissed. He also argued that no writing qua any licensee being given to defendant has been proved by the defendant, so accordingly, he argued that suit be dismissed.

Heard, and considered and gone through the file.
My Issue was finding are as under :-

ISSUES NO.1 and 2:-

- 1. Whether the plaintiff is entitled to the relief of mandatory injunction, as prayed for. OPP***
- 2. If issue No.1 is not proved, then in the alternative, plaintiff is entitled to the relief of possession. OPP***

8. Both these issues are being taken up together being inter-connected and further in order to avoid unnecessary repetition of discussion. Onus to prove issues No.1 and 2 were upon the plaintiff.

Plaintiff is claiming the relief of mandatory injunction i.e. direction to hand over the vacant possession of suit property and if relief of mandatory injunction is not granted then alternative relief of possession.

Here, it is important to mention that plaintiff has stated that vide writing dated 20.03.2012, he had purchased the suit property falling in lal lakir of village Ugrupur Dalla, Tehsil Sultanpur Lodhi, from Mohinder Lal and Pran Nath, who had one sale deed dated 07.11.1967 in their favour. It is an admitted fact that at present defendant is residing in the suit property. Now it is to be considered if plaintiff is owner of the suit property or not and if yes, whether he had inducted defendant in the suit property as licensee. Plaintiff has relied upon an agreement dated 20.03.2012 in his favour as per which he claims that he has become the owner of the suit property. To prove this, he has got examined PW1, Beant Singh, who identified his signatures over the alleged writing i.e. agreement to sell dated 20.03.2012 Ex.P1, affidavit Ex.P2. Further, PW2, Tarsem Singh has also identified his thumb marks on this agreement Ex.P1 and affidavit Ex.P2. Thereafter, plaintiff, Gian Singh himself stepped into witness box. PW4, Narinder Singh also deposed as per the testimony of other plaintiff witnesses and stated that defendant and her sons were not having place to reside, so they were accommodated by the

plaintiff in the suit property temporarily as licensee because they had close relationship. Here, it is important to mention that rule of ownership of land within abadi deh or lal lakir or village is that ownership follows possession. But, here both the parties i.e. plaintiff and defendant are claiming their ownership as plaintiff has claimed his ownership on the basis of writing i.e. agreement dated 02.03.2012 Ex.P1. To prove this he has got examined PW1 and PW2, who have proved the writing dated 20.03.2012. Now, defendant Kulwant Kaur herself stepped into witness box as DW1 and stated that she is residing over the suit property since long and the alleged agreement dated 20.03.2012 is not binding on her and it is forged and fabricated document prepared by plaintiff to grab her property. No evidence has been put forth by the defendant to prove the fact that the alleged agreement dated 20.03.2012 is forged and fabricated document. In her cross examination, she has admitted to the fact that her daughter Harpreet Kaur was married to the son of plaintiff, i.e. Daljit Singh, who died and thereafter she was married to second son of plaintiff i.e. Ranjit Singh. She has stated that “at the time of marriage, our daughter were residing at village Dalla”. Later, she has stated that she never gave any statement in the Court in any earlier litigation that she shifted to Dalla about 20-25 years ago. Here plaintiff has relied upon the marriage card of daughter of defendant as per which the barat went to Jalandhar for solemnization of marriage of daughter of defendant and son of plaintiff. To this, she has admitted that barat came to Jalandhar on the address given in the marriage card and then she volunteered that she resided there only for 6 months. If we compare the testimony of defendant, the document Ex.PX/1 which is cross examination of

defendant, Kulwant Kaur in her previous litigation in a suit titled as “Kulwant Kaur Vs Gian Singh”, CS/27/2017, she had stated that “we came to village Dalla 20-25 years ago”. She stated that “my inlaws are from village Dalla” again said they are residing at village Nawanpur Dona. The said village is at a distance of 5 Km from village Dalla. I came to Nawanpind Dona after my marriage”. She stated that the suit property is their ancestral house. She further stated that “the electric and water connection for the first time was installed about 4 years ago and prior to that there is no electric and water connection”. This testimony is dated 13.02.2019, so meaning thereby that if 4 years prior to that the electric connection and water connection was installed in the suit property, it was installed somewhere in the year 2014. In the present case at hand, also defendant has placed on record few documents in her evidence which are water supply receipt Ex.DW1/A to Ex.DW1/5, electric bills Ex.DW1/9 to Ex.DW1/24. One important thing which clinches the matter is all the receipts of payment of bills and the bills are for the period of 2020, 2021, 2022. No electric bill, water supply bill or any payment receipt of the time prior to 2012-13 and 2014 have been placed on record by the defendant. She placed on record few photocopies of bills of electricity which are of the year 2015 which goes in connection with her testimony in previous suit titled as “Kulwant Kaur Vs. Gian Singh” that electric connection was installed 4 years ago from the date when her evidence was recorded in 2019. In the present case, when her cross examination was conducted, she again stated that she cannot produce any document to show possession of her father in law over the suit property. A further interesting thing is to be considered is that her father in law is stated to

have died 11 years ago and the electric meter was installed in her name 10 years ago. Water connection was installed first time about 6 years ago. She stated that no electric connection was ever got installed in the name of her father in law during his lifetime. She also stated that they were residing without electric and water connection prior to that. Not only this she stated that she has vote in village Ugrupur and the same was made 10 years ago. She also admitted that her daughter is residing separately from son of plaintiff for the past 8 years. She also stated that as per her estimation her vote in village Ugrupur was issued in the year 2016. She all this clearly shows, that she cannot produce any document that her marriage was solemnized at village Ugrupur. If defendant was in possession of suit property since then, but she has no document of her possession at village Ugrupur since the day of her marriage. One thing which clinches here is that whatever document of possession have been placed on record by the defendant are after the year 2013-14 specifically of the year 2015 and upwards. It is highly improbable that in today's era a person would reside at any place without electric and water connection. There may be some source of electricity and water connection over the suit property, if defendant was residing over the same for the past 20-25 years. To show her possession over the suit property only defendant herself stepped into the witness box. She has not examined any independent witness of the area, locality, neighborhood of village or sarpanch, member panchayat etc., who could come in the Court and state this fact that defendant had been residing over the suit property since the time of her marriage. On the contrary, the plea of plaintiff, that he had purchased the suit property on 20.03.2012 and thereafter raised

construction and thereafter he gave the suit property to defendant to reside seems probable because firstly, plaintiff has proved the agreement dated 20.03.2012, and to this defendant had taken the plea of forgery and fabrication, which has not been proved the defendant as no evidence has been put forth by defendant to prove how the said document has been forged. It is stated by plaintiff that suit property was dilapidated and old when he purchased the same and if we correlate this testimony with the testimony of defendant, it seems that the plea taken by plaintiff is improbable since after raising construction over the same, property was given to defendant to reside who was the mother of his daughter in law. It is also an admitted fact that now dispute has cropped up between son of plaintiff and daughter of defendant. No doubt when the property is within lal lakir, the general rule is ownership follows possession, however in this case, the presumption is rebutted by plaintiff by leading the entire evidence. Accordingly, relief of mandatory injunction is granted with directions to defendant, Kulwant Kaur (written as Kulwant Singh in head note of plaint) to hand over the vacant possession of suit property to plaintiff within one month from the date of this order and in case she fails to do so, plaintiff can get the same recovered through the process of Court. In view of aforesaid discussion, issues No.1 and 2 are decided in favour of plaintiff.

ISSUE NO.3:-

Whether plaintiff is entitled to recover Rs.5,000/- for use and occupation of the aforesaid house.OPP

9. Onus to prove issue No.3 was upon the plaintiff.

In view of above, it is proved that plaintiff is entitled to vacant possession of the suit property. Since, by filing of the present suit, the license which was granted in favour of defendant by the plaintiff, to reside in the suit property has come to an end. So accordingly, after filing of the suit, the license is deemed to have to come to an end. Plaintiff is seeking the relief of use and occupation charges @ Rs.5,000/- per month, however, he has placed on record any document to prove that in the said area the rate is Rs.5,000/- per month. So as per general market rate, Rs.3,000/- per month is adjudged as the rate for use and occupation charges which are to be paid by the defendant from the date of filing of this suit i.e. 27.02.2019 till today i.e. final passing of this judgment and decree.

ISSUE NO.4:-

Whether plaintiff is entitled to the relief of permanent injunction, as prayed for.OPP

10. Onus to prove issue No.4 was upon the plaintiff.

As a consonance of finding of issues No.1 and 3, defendant is directed not to make any edition and alteration or any construction in the suit property as prima-facier case appears in favour of plaintiff. Accordingly, issue No.4 is are decided in favour of plaintiff.

ISSUES NO.5,6 and 7:-

Whether the suit is maintainable in the present form. OPP

Whether plaintiff has got locus standi or cause of action to file the

present suit.OPP

Whether plaintiff has not come to the Court with clean hands and has suppressed the material facts, if so, its effect. OPD

11. All these issues are being taken up together being inter-connected and further in order to avoid unnecessary repetition of discussion. Onus to prove issues No.5 to 7 were upon the defendant.

No evidence has been led qua the same and neither has been raised at the time of argument. Accordingly, issues No.5 to 7 are disposed off being not pressed.

ISSUE No.8 (RELIEF):-

12. In view of my findings returned on issues above, suit of the plaintiff succeeds and the same is hereby decreed, with costs for mandatory injunction and defendant Kulwant Kaur (written as Kulwant Singh in head note of plaint) is hereby directed to vacate and hand over the vacant possession of the house as mentioned in the head note of the plaint to plaintiff, within one month. Further, plaintiff is entitled to Rs.3,000/- per month as the rate for use and occupation charges which are to be paid by the defendant from the date of filing of this suit i.e. 27.02.2019 till today i.e. final passing of this judgment and decree. Further, plaintiff is also entitled to relief of permanent injunction and defendant is hereby restrained from making any addition, alteration demolition or raising any sort of construction in any manner whatsoever and forever, except in due course of law. Decree be

prepared accordingly and the file be consigned to the Judicial Record Room, Sultanpur Lodhi, after due compilation.

Pronounced in Open Court.

Dated:-11.10.2023

Nitish

Direct Typed

(Mehak Sabharwal),
Additional Civil Judge (Senior Division),
Sultanpur Lodhi.
(UID No.PB0385)