

(2014) 04 P&H CK 0263

High Court Of Punjab And Haryana At Chandigarh

Case No: R.S.A. No. 1282 of 2011 (O&M)

Delhi Diocesan Trust Association

APPELLANT

Vs

Ashwani Kumar

RESPONDENT

Date of Decision: April 1, 2014

Citation: (2014) 3 RCR(Civil) 985

Hon'ble Judges: Rakesh Garg, J

Bench: Single Bench

Advocate: Sachin Mittal, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Rakesh Garg, J.

Appellant filed a suit for mandatory injunction against the defendant-respondent on the averments that the appellant is owner of the suit property, i.e. a Nursery existing in the open space, which was given to grandmother of the respondent as a licensee at an annual rent of Rs. 5,000 and on expiry of the said license period, she was liable to hand over its possession to the appellant. But, after expiry of the said period she continued to be in possession of the said property. It was further averred in the plaint that a license deed was executed between the parties on 10.03.1997, according to which the defendant-respondent was to continue for another one year on payment of Rs. 5,000 as license fee per year for 1 = Kanals of plot to be used as a Nursery. A notice was issued by the plaintiff-appellant to the defendant-respondent for termination of the license under registered cover dated 20.11.1997, which was duly received by him and since the license was terminated, the defendant-respondent was occupying the disputed property as an unauthorized occupant and was liable to hand over vacant possession of the same. Since the defendant-respondent refused to do so, necessity arose to file the instant suit. Upon notice, the defendant-respondent contested the claim raising various preliminary objections. In the written statement, it was specifically averred that the defendant was in possession of the suit property as a tenant thereof and was not bound by any

agreement which was against the statute and the tenancy being of a property situated in urban area, the Civil Suit was not maintainable. It was further denied that the property along with the adjoining property was owned by the appellant. In fact, it was stated that the appellant has got no right, title or interest in the suit property.

2. On the basis of pleadings of the parties, issues were framed and thereafter, the parties led evidence to prove their respective pleas.

3. The trial Court, after considering the evidence on record and hearing learned counsel for the parties, held that the defendant was a licensee, who could be dispossessed from the disputed premises by the owner i.e. plaintiff and thus, the plaintiff was held entitled to the decree for mandatory injunction by deciding issues No. 1 and 2 in favour of the plaintiff-appellant. The remaining issues were decided against the defendant and suit of the plaintiff-appellant was decreed vide judgment and decree dated 30.07.2008.

4. Aggrieved from the aforesaid judgment and decree of the trial Court, the defendant filed an appeal, which was accepted by the first appellate Court vide its judgment and decree dated 06.10.2010 and the judgment and decree of the trial Court was set aside. While accepting the appeal, the lower appellate Court found that there was no document of title to prove ownership of the plaintiff-appellant over the suit property and thus, the suit for mandatory injunction directing the defendant-respondent to hand over vacant possession of the suit property was not maintainable at the instance of the appellant.

5. Even before this Court, learned counsel for the appellant could not point out any document/evidence to show its title of ownership over the suit property. Though an effort has been made to set up its title on the basis of a Civil Court judgment passed in Civil Suit No. 66 of 1978 filed by the appellant against Haryana Church Welfare Association (Regd.) (Ex. P9), however, the said judgment is of no help to the appellant as admittedly the suit property in the aforesaid Civil Suit was only a room in the compound of Church of Ascension, Railway Road, Karnal and not the suit property, which is a Nursery in an open and vacant plot.

6. In view thereof, this Court finds no merit in this appeal as no substantial question of law arises therein. Dismissed.