

***Before Rameshwar Singh Malik, J.***

**ADARSH P. JAUHAR—Appellant**

*versus*

**GULSHAN JAIN AND OTHERS—Respondents**

**RSA No. 1961 of 1985**

January 22, 2014

***Specific Relief Act, 1963 - S. 39 - Indian Registration Act, 1908 - S. 17 - Indian Stamp Act, 1899 - S. 35 - Transfer of Property Act, 1882 - S. 107 - Unregistered lease deed - Admissibility in evidence - Unregistered lease deed was executed between respondent and previous owners of suit property - Respondent alleged that appellant took forcible possession of suit property - Respondent filed suit for mandatory injunction against appellant - Appellant submitted that since lease deed was not registered it was not admissible in evidence - Respondent submitted that he had paid eleven times penalty to make lease deed admissible in evidence - Held, that by paying stamp duty and penalty under Section 35 of Stamp Act, basic defect of non-registration of lease deed would not stand cured - Requirement of law under Section 35 of Stamp Act and under Section 17 of Registration Act as well as under Section 107 of Transfer of Property Act, are different and independent of each other - Further, suit was not maintainable against appellant as he was not party to lease deed.***

*Held*, this Court feels no hesitation to conclude that merely by paying stamp duty and penalty under Section 35 of the Stamp Act, the basic defect of non-registration of the lease deed would not stand cured. It is so said, because requirement of law under Section 35 of the Stamp Act on the one hand, and requirements of law under Section 17 of the Registration Act as well as under section 107 of the Transfer of Property Act, were different and independent of each other.

(Para 14)

*Further held*, in spite of paying the stamp duty and penalty under Section 35 of the Stamp Act, requirement of law under Section 17 of the

Registration Act and Section 107 of the Transfer of Property Act would not automatically stand complied with.

(Para 15)

*Further held*, that in view of the abovesaid undisputed fact between the parties, suit for mandatory injunction under Section 39 of the Specific Relief Act was not maintainable against defendant-appellant because he was not party to the lease deed and due to that reason he had no obligation towards the plaintiff-respondent. It had been specifically stated so in the written statement also, filed on behalf of defendant-appellant. Further, no injunction could have been granted until and unless the defendant-appellant was alleged and proved to be a licensee. The view taken by this Court finds support from the judgments in *Jasmer Singh's case (supra)*, *Dr. Prem Singh Mann's case (supra)* and *Makhan Lal's case (supra)*. Thus, the irresistible conclusion is that, suit for mandatory injunction filed by the plaintiff-respondent under Section 39 of the Specific Relief Act was not maintainable against defendant-appellant.

(Para 17)

M.L. Sarin, Sr. Advocate with Ms. Hemani Sarin, Advocate, *for the appellant*.

Raman Mahajan, Advocate, for the respondents.

**RAMESHWAR SINGH MALIK, J.**

(1) Defendant No.2, having remained unsuccessful in both the courts below, has filed the instant regular second appeal in a suit for perpetual and mandatory injunction.

Facts first.

(2) Plaintiff-respondent filed the suit for mandatory injunction against Anoop Singh-defendant No.1, who was co-lessee of the plaintiff, Adarsh P. Jauhar-defendant No.2, who is present appellant and defendant Nos.3 to 5 who were the original owners and landlords of the suit property. It was a suit for perpetual, mandatory and permanent injunction under Section 39 of the Specific Relief Act, seeking mandatory injunction against defendant Nos. 1 and 2, namely, Anoop Singh and present appellant not to remove the signboards-*cum*-name plates Mark 'AB'

from the main entrance of the ground floor of S.C.O. No.11, Sector 17-E, Chandigarh. It was also sought that portion from 'D' to 'E' may be directed not to be closed. Further direction was sought not to obstruct the electricity supply from place 'C' and defendant Nos. 1 and 2 be directed to hand over the vacant possession of the portion 'DASLN' as described in the site plan. It was the pleaded case of the plaintiff-respondent that there was an unregistered lease deed dated 19.05.1977 executed between the previous owners of the suit property *i.e.* defendants-respondent Nos. 3 to 5 as landlords and plaintiff as well as defendant No.1-Anoop Singh as lessees. It was further alleged by the plaintiff that in violation of clause 11 of the lease deed dated 19.05.1977, defendant No.2 took forcible possession of the suit property. Defendant No.1-Anoop Singh was under legal obligation, to hand over the vacant possession of the suit property to the plaintiff, in view of clause 11 of the lease deed, plaintiff being his co-lessee. The forcible and illegal possession of defendant No.2 left the plaintiff with no other option except to file the present suit.

(3) Having been served in the suit, defendant No.2 appeared and filed his written statement whereas Anoop Singh-defendant No.1, co-lessee of the plaintiff and defendants-respondent Nos. 3 to 5 were proceeded *ex parte*. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

1. *Whether the suit is maintainable in the present form? OPP*
2. *Whether the suit is correctly valued for the purpose of court fee and jurisdiction? OPP*
3. *Whether the plaintiff is entitled to the injunction prayed for? OPP*
4. *Relief*

(4) With a view to substantiate their respective stands taken, both the parties led their documentary as well as oral evidence. After hearing both the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that plaintiff has duly proved his case. Accordingly, the suit was decreed *vide* impugned judgment and decree dated 19.03.1983. Defendant No.1-appellant filed his appeal

which came to be dismissed by learned Additional District Judge, Chandigarh *vide* impugned judgment and decree dated 25.02.1985. Hence this second appeal at the instance of defendant No.2.

(5) While issuing notice of motion *vide* order dated 28.06.1985, this Court stayed the dispossession of the appellant till further orders. The appeal was admitted for regular hearing *vide* order dated 11.09.1985. During the pendency of the appeal, three sale deeds were executed regarding S.C.O. No.11, Sector 17-E, Chandigarh in favour of Tej Bans Singh Jauhar, Smt. Neena Jauhar, Manish Jauhar and Ishwinder Singh Jauhar. These three registered sale deeds were dated 17.05.1995 and 19.05.1995 and were placed on record as Annexures A-1 to A-3 with Civil Miscellaneous application No. 845C of 2014. Similarly, a transfer letter dated 07.07.1995 was placed on record as Annexure A-4 with CM. No.845C of 2014 along with an affidavit of Manish Jauhar to bring on record the subsequent events. That is how, this Court is seized of the matter.

(6) Learned Senior counsel for the appellant submits that since lease deed dated 19.05.1977 Ex.PX was admittedly not a registered document, it was not admissible in evidence. The lease deed was required to be compulsorily registered. The entire case of the plaintiff-respondent was based on clause 11 of the lease deed Ex.PX. Defendant No.2-appellant was not party to the lease deed because of which terms and conditions thereof would not be binding on the appellant. He further submits that in view of the provisions of Section 49 of the Registration Act and Section 107 of the Transfer of Property Act interpreted in *Choeth Ram v. Sh. Deep Chand Jain and another*(1), *Satish Chand Makhan & others v. Goverdhan Dass Byas and others*(2), *Sardar Amar Singh and another v. Smt. Surinder Kaur*(3), *M/s KB.Saha and Sons Pvt. Ltd. v. M/s. Development Consultants Ltd.*(4) and *Sukhdev Singh v. Charanjit Singh and others*(5), the suit of the plaintiff-

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(1) 1977 (1) RLR 385

(2) 1984 (1) RCR 264 (SC)

(3) AIR 1975 Madhya Pradesh 230 (FB)

(4) 2008 (1) RCR 660 (SC)

(5) 2011(4) PLR 596

respondents could not have been decreed. Lease deed Ex.PX being an unregistered document could not have been made the basis of the suit and the same was illegally decreed on the basis of clause 11 of the lease deed. Since the appellant was not the party to the lease deed, suit for mandatory injunction against him would not be maintainable under Section 39 of the Specific Relief Act. On this issue, he places reliance on the judgments of *Jasmer Singh Vs. Kanwaljit Singh and another*(6) and *State of Haryana Vs. Dr. Prem Singh Mann*(7).

(7) Learned Senior counsel for the appellant next contended that no injunction could have been granted against the present appellant-defendant No.2, as he was not a licensee. In this regard, he relies upon the judgment of Hon'ble Supreme Court in case *Makhan Lal v. Asharji Lai and others*(8). Learned Senior counsel would further submit that once defendant No.2-appellant Adarsh P. Jauhar had died on 09.11.1994 and now Manish Jauhar is owner in possession of the suit property, no injunction can be granted against the true owner. On this issue, he relies upon the judgments in *Sh. Amrao Singh and others v. Sh. Sanatan Dharam Sabha Chandigarh (Regd). Chandigarh*(9), *Sri Hanumanthappa v. Sri Muninarayanappa*(10) and *Premji Ratansey Shah and others v. Union of India and others*(11). He also submits that in spite of death of Adarsh P. Jauhar and not bringing on record his legal representatives, the appeal would not abate. He relies on the notification dated 21.02.1992 issued by this court read with Order 22 Rule 3(2) and Rule 11 of the Code of Civil Procedure ('CPC' for short) and the judgment in *Sukhdev Singh v. Charanjit Singh and others*(12). In the alternative, learned Senior counsel submits that as per provisions of Section 2(11) of the CPC, Manish Jauhar being co-owner in possession of the suit property, would be an inter meddler with the estate and would

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(6) 1990 PLJ 614

(7) 1996 (3) PLR 799

(8) (1997) 9 SCC 604

(9) (1984) PLR 654

(10) JT 1996(1) SC 309

(11) (1994) 5 SCC 547

(12) JT 2011 (4) PLR 596

fall within the definition of legal representative of deceased appellant. He also places reliance on the judgment dated 18.11.2013, passed by this Court in Civil Revision No.6363 of 2013, which arose out of eviction proceedings against the plaintiff-respondent No. 1, initiated by the new owners of the suit property *i.e.* Manish Jauhar etc. Concluding his arguments, learned Senior counsel submits that once the tenancy of the plaintiff has been terminated and his suit was based only on the lease deed, no cause of action survives in favour of the plaintiff-respondent No.1. Finally, he prays for setting aside the impugned judgments and decrees by allowing the present appeal.

(8) Per contra, learned counsel for the plaintiff-respondent No.1 submits that once in compliance of the interim order dated 17.03.1983, passed by the learned trial Court, impounding the lease deed Ex. PX, plaintiff-respondent No.1 has paid the eleven times penalty, the lease deed becomes admissible in evidence. He further submits that once the appellant is no more since 09.11.1994 and his legal representatives were not brought on record, the appeal would not survive and the same stands abated. He also submits that the provisions of Order 22 Rule 2A CPC were also not complied with. He submits that appellant-defendant No.2 did not step into witness-box. Owners-defendant Nos.3 to 5 as well as Anoop Singh-defendant No.1 did not contest the suit. The learned trial Court rightly decreed the suit on the basis of lease deed Ex.PX.

(9) He next contended that since the learned courts below have recorded their cogent and concurrent findings of fact, there was no scope for interference in this appeal. He submits that there was no substantial question of law involved in the present case and he prays for dismissal of the appeal.

(10) Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the present appeal deserves to be allowed, for the following more than one reasons. Under the circumstances of the case, following substantial questions of law fall for consideration of this Court.

1. *Whether despite payment of eleven times penalty under the Indian Stamp Act, 1899, the unregistered lease deed was admissible in evidence and decree of mandatory injunction could have been issued?*
2. *Whether on the basis of unregistered lease deed, suit for permanent and mandatory injunction was maintainable against defendant No.2- appellant, who was admittedly not party to the lease deed?*
3. *Whether the learned courts below have completely misread, misconstrued and misinterpreted the pleadings, evidence as well as relevant principles of law, while passing the impugned judgments and decrees?*

(11) Taking the first question first, it is a matter of record that the lease deed dated 19.05.1977, between defendants-respondent Nos. 3 to 5 being owners and landlords on one hand and plaintiff as well as defendant No.1-Anoop Singh being co-lessees on the other hand, was unregistered one. Clause 11 of the lease deed Ex.PX which was very basis of the suit filed by the plaintiff-respondent reads as under:-

*“If at any time, any one of the party out of the lessee leaves the premises, the same shall be handed over to the remaining party out of the lessee and only the remaining party, as lessee shall be bound to pay the rent to the lessor.”*

(12) It was not in dispute that the lease deed Ex.PX signed by both the landlord and the lessee required compulsory registration. It is also not in dispute that if any document, despite being compulsorily registrable, was not a registered document, the same would not be admissible in evidence. So as to overcome the serious and legal difficulty, plaintiff-respondent paid eleven times penalty on this lease deed Ex.PX in compliance of the order dated 17.03.1983, whereby the plaintiff was directed to pay stamp duty and penalty.

(13) Real crux of the argument raised by learned counsel for the respondent-plaintiff was that once the plaintiff had paid stamp duty and penalty, the lease deed Ex.PX would become admissible in evidence, despite being an unregistered document. The argument seems to be

attractive at the first blush but on deeper consideration in the context of facts of the present case and relevant provisions of law, the arguments has been found without any force and liable to be rejected. The view taken by this court also finds support from the judgments in *Deep Chand Jain's case (supra)*, *Satish Chand Makhan's case (supra)*, *Surinder Kaur's case (supra)* and *M/s. K.B. Saha and Sons' case (supra)*.

(14) Having said that, this Court feels no hesitation to conclude that merely by paying stamp duty and penalty under Section 35 of the Stamp Act, the basic defect of non-registration of the lease deed would not stand cured. It is so said, because requirement of law under Section 35 of the Stamp Act on the one hand, and requirements of law under Section 17 of the Registration Act as well as under Section 107 of the Transfer of Property Act, were different and independent of each other.

(15) In view of the discussion hereinabove, the answer to the first substantial question of law is and has to be in the negative. It is held that in spite of paying the stamp duty and penalty under Section 35 of the Stamp Act, requirement of law under Section 17 of the Registration Act and Section 107 of the Transfer of Property Act would not automatically stand complied with. Thus, the first substantial question of law is answered, accordingly.

(16) Coming to the second substantial question of law, it is to be noted that admittedly defendant No.2-appellant was not party to the lease deed Ex.PX. Bare reading of clause 11 of the lease deed, reproduced hereinabove, would show it was binding only *qua* defendant No.1-Anoop Singh, if at all. The prayer made in the suit for mandatory injunction, could not be said to be a collateral purpose by any stretch of imagination, particularly against the present appellant who was not even party to the lease deed. It was the own set up case of the plaintiff-respondent that defendant No.2-appellant took the forcible possession of the suit property.

(17) In view of the abovesaid undisputed fact between the parties, suit for mandatory injunction under Section 39 of the Specific Relief Act, was not maintainable against defendant-appellant because he was not party to the lease deed and due to that reason he had no obligation towards the plaintiff-respondent. It had been specifically stated so in the



written statement also, filed on behalf of defendant-appellant. Further, no injunction could have been granted until and unless the defendant-appellant was alleged and proved to be a licensee. The view taken by this Court finds support from the judgments in *Jasmer Singh's case (supra)*, *Dr. Prem Singh Mann's case (supra)* and *Makhan Lal's case (supra)*. Thus, the irresistible conclusion on abovesaid second substantial question of law is that, suit for mandatory injunction filed by the plaintiff-respondent under Section 39 of the Specific Relief Act, was not maintainable against defendant-appellant. This question is answered, accordingly.

(18) So far as the third substantial question of law is concerned, a bare combined reading of impugned judgments rendered by the learned courts below would show that both the learned courts have completely misread, misconstrued and misinterpreted the pleadings, evidence and relevant principles of law applicable thereof. On the one hand, plaintiff-respondent himself has alleged in his plaint that defendant No.2-appellant was in unauthorized possession, being a trespasser in the suit property and on the other hand, the learned courts below have made out an entirely new case in favour of the plaintiff-respondent, going beyond the pleadings of the parties.

(19) Similarly, the lease deed Ex.PX which was not admissible in evidence has been made the basis for decreeing the suit of plaintiff-respondent, altogether ignoring the relevant provisions of Section 17 of the Registration Act, 1908 as well as Section 107 of the Transfer of Property Act, 1882. In view of the foregoing discussion, the answer to the third substantial question of law posed hereinabove, is in the affirmative. It is held that the learned courts below have committed serious error of law, while going beyond the pleadings and evidence on record, as well as illegally ignoring the relevant provisions of law, referred to hereinabove. Thus, the impugned judgments and decrees cannot be sustained, for this reason as well.

(20) Further, the important and relevant subsequent events have been brought on record by way of abovesaid Civil Misc. No.845-C of 2014. Judicial notice of the abovesaid subsequent events deserves to be taken. The position as on date is that the plaintiff-respondent is seeking

injunction against the true owner which is not permissible in law. This view also finds support from the judgments in *Amrao Singh's case (supra)*, *Hanumanthappa's case (supra)* and *Premji Ratansey Shah's case (supra)*.

(21) A bare perusal of the order dated 18.11.2013 passed by this court in C.R. No. 6363 of 2013 (*Gulshan Kumar Jain v. Neena Jauhar and others*) would show that the plaintiff-respondent has no case either in law or in equity. Having purchased the suit property by above said sale deeds brought on record by way of Civil Misc. No.845-C of 2014, true owners-landlords initiated the ejection proceedings against the plaintiff-respondent. Learned Rent Controller, Chandigarh *vide* his order dated 01.02.2012 accepted the eviction petition. Plaintiff-respondent filed his appeal which was dismissed by the learned appellate authority, Chandigarh, *vide* its judgment dated 03.08.2013.

(22) Feeling aggrieved against the concurrent findings returned by the authorities under the Rent Act, plaintiff-respondent Gulshan Kumar Jain, approached this Court by way of Civil Revision No.6363 of 2013, which was also dismissed by this Court *vide* order dated 18.11.2013. The relevant observations made by this court, which can be gainfully referred herein, read as under:-

*“In the present case, it is apparent from the record that the necessity as projected by the respondents (landlords) is of Munish Jauhar, who is already doing business on the second floor which is adjoining the premises in question. It is further apparent from the record and not even disputed by counsel for both the parties that respondent No.2 Munish Jauhar is carrying on business at a large scale and having numerous employees and besides carrying on business in the remaining portion adjoining the demised premises on the same floor, has taken on rent additional accommodation of entire IIIrd floor of adjoining S.C.O. No. 15, Sector 17-E, Chandigarh. In such situation, when a person is carrying on a business on a particular floor and is settled, then it is natural for him to expand his business as far as possible, on the same floor so that no inconvenience is caused to him. Not only this, in this situation the age old principle that the landlord is the best judge is squarely applicable and thus, the*

*tenant cannot dictate terms to him so as to negate his plea of personal necessity. It is evident from the ejectment application that the necessity of only second floor has been projected by the respondents (landlords) and not of any other floor. The facts and circumstances of the case also show that the said need is justified and appeals to the logic of a prudent man. Thus letting out or reconfirming of lease to other tenants during the pendency of the rent application of a floor, which is other than the second floor is a completely justified act on part of the respondents (landlords) and do not in any way dent the need of the landlords.*

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*However, after hearing counsel for the petitioner (tenant) this court is not inclined to allow the said application as the application does not go to the root of the present matter. As is evident from the order dated 20.04.199 (PS), Munish Jauhar was studying at that time and not working. However, at the time of filing present ejectment application, Munish Jauhar is working at a large scale and is doing business on the same floor where the demised premises is situated. Thus reliance by learned counsel on Annexures A-8 and A-9 are misconceived, as the necessity keeps on changing with time and present case is a classic example where the necessity of landlord is proved to the hilt.*

*In view of the above, finding no merit in the present revision petition, as well as application for additional evidence the same are hereby dismissed.”*

(23) So far as the argument raised by learned counsel for the respondent that the appeal has been abated, is concerned, the same has also been duly considered and it has been found to be without any merit. A bare reading of notification dated 21.02.1992 issued by this Court qua Rule 3(2) and Rule 11 of Order 22 CPC, would make it clear that in the circumstances as obtaining in the present case, instant regular second appeal will not abate. The abovesaid amendment made in the CPC have also not been repealed by the later amendments of 1999 and 2002. The view taken by this Court finds support from the judgment in *Sukhdev Singh's case (supra)*.

(24) It is also pertinent to note here that once the tenancy of the plaintiff-respondent on account of abovesaid lease deed Ex.PX which was the sole basis for filing the present suit, stood terminated and the plaintiff-respondent stands evicted from the suit property, no cause of action survives in his favour. He has been left with no *locus standi* to pursue his suit for mandatory injunction, because that relief is no more available to the plaintiff-respondent.

(25) Further, during the course of hearing, learned counsel for the plaintiff-respondent could not raise any substantive argument so as to support the impugned judgments and decrees passed by the learned courts below. In view of the observations made hereinabove, it is held that the impugned judgments and decrees were since suffering from patent illegality apparent on the record of the case, the same cannot be sustained.

No other arguments was raised.

(26) Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned judgments and decrees cannot be sustained and the same are, hereby, set aside. Consequently, suit of the plaintiff-respondent must fail and the same is, hereby, dismissed.

Resultantly, the instant regular second appeal stands allowed, however, with no order as to costs.

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***S. Gupta***

***Before Surya Kant, J.***

**DR. JANG BAHADUR SINGH & OTHERS—*Petitioner***

*versus*

**FRICK INDIA LTD. AND OTHERS—*Respondents***

**CAPP No. 38 of 2013**

December 18, 2013

***Companies Act, 1956 - Ss. 397, 398, 402 & 403 - Company Law Board Regulations, 1991 - Regs. 44 & 46 - Code of Civil Procedure, 1908 - O. 6 R. 17, O. 39 R. 4 - Company Law Board - Power of -***