HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 13.09.2023
Pronounced on: 20.09.2023

CSA No. 18/2018

Madan Lal aged 74 years
S/o. Pt. Radhya Krishan
R/o. Katra Vashino Devi
Tehsil Katra District Reasi
. .....Petitioners/Appellants

Through: Mr. L. K. Sharma, Sr. Advocate with
Mr. Deepak Khajuria, Advocate

vs

Shri Mata Vaishno Devi Shrine Board th.
its Chief Executive Officer, Katra, District
Reasi
..... Respondents

Through: Mr. Adarsh Sharma, Advocate
Mr. Rohit Kohli, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By concurrent judgments, the two Courts below i.e. the court of Sub Judge Katra (hereinafter to be referred as "the trial court") and the court of District Judge, Reasi (hereinafter to be referred as "the 1st appellate court"), have dismissed the suit of the plaintiff/appellant, whereby he had sought declaration to the effect that he is the tenant of Thara (space) measuring 72.59 sq.ft. located at Pharati Kho, a place enroute from Ban Ganga to Holy Shrine of Shri Mata Vaishno Devi Ji with a consequential relief of permanent prohibitory injunction restraining the defendant/respondent from forcibly evicting the plaintiff from the aforesaid Thara, otherwise than in due course of law.

2) It appears that the appellant had filed a suit of the nature indicated above before the trial court in which he had claimed that he is tenant of the suit space and that initially he was tenant of Dharmarth Trust. It was the case of the plaintiff/appellant that he was conducting the business of sale and manufacture from the demised space and when in the year, 1986, the Shri Mata Vaishno Devi Shrine Act was enacted, the tenants including the plaintiff under the Dharmarth Trust became the tenants of the Shrine Board. According to the plaintiff, he continued to pay rent to the defendant-Board on half yearly basis. It was claimed by the plaintiff that the defendant-Board is now threatening him to evict him from the suit space without adopting due course of law.

3) Respondent-Board filed its written statement and claimed that the plaintiff was a licensee under Dharmarth Trust for a period of six months for selling Barf Malai from Darshani Darwaza to Darbar Mata Vaishno Devi Ji. The defendant denied the status of the plaintiff/appellant as a tenant and asserted that the space was allotted to the plaintiff on license for a fixed term. It has been claimed that the license of the plaintiff has been revoked and he is an unauthorized trespasser.

4) On the basis of the pleadings of the parties, the learned trial court framed the following issues:

> "1 Whether the plaintiff was the tenant of Dharamrath Trust. If so, what is its effect on the suit?
> 2. Whether the plaintiff was the licensee of Dharamrath Trust. If so, what is its effect on the suit?
> 3. In case Issue No. 1 is proved in affirmative whether the defendant is trying to dispossess the plaintiff forcibly without adopting due course of law?
> ---OPP
> 4. Whether the suit is not maintainable, if so, how?" ----OPD
> 5. Relief?

5) The trial court after recording evidence of the parties concluded that the appellant/plaintiff has been unable to prove that he was tenant of the premises/space. It was further concluded that no interest was ever created in favour of the appellant by the defendant in respect of the property in question and he was only given permission to make use of the route from Darshani Deodi up to Bhawan of Mata Vaishno Devi Ji for selling Barf Malai. According to the trial court, the legal possession of the premises continued to be with the defendant-Board and the plaintiff was only permitted to make use of the premises for the purposes of selling Barf Malai. In view of this finding arrived at by the learned trial court, neither the relief of declaration nor the relief of injunction was granted in favour of the appellant and the suit was dismissed.

6) The learned 1st appellate court vide its impugned judgment dated 25.10.2018 concurred with the findings of the learned trial court and concluded that the plaintiff has miserably failed to prove that he was inducted as tenant in the suit property or that he was treated as a tenant by the defendant-Board. It was further observed that only inference which can be drawn is that the plaintiff was a licensee of the suit property. With these findings, the learned 1st appellate court dismissed the appeal of the plaintiff/appellant.

7) Through the medium of instant appeal, the appellant has challenged the impugned judgments/decrees passed by the learned courts below, primarily on the ground that the finding of the courts below that the plaintiff was only a licensee and not a lessee of the suit property is perverse and that the plaintiff was in settled possession of the suit property for decades together as such, the courts below could not have refused decree of permanent prohibitory

injunction in favour of the appellant. It has also been contended that the impugned judgment passed by the 1st appellate court is not in accordance with the provisions contained in Order 41 Rule 31 of the Code of Civil Procedure (CPC) as the points for determination have not been formulated by the said court.

8) I have heard learned counsel for the parties and perused the record of the case including the impugned judgments and record of the trial court as well as the record of the 1st appellate court.

9) Before examining the merits of contentions raised by the appellants and in order to determine as to whether any substantial questions of law has arisen in this appeal, it would be necessary to understand the scope of Second Appeal as also the procedure for entertaining the same. In this regard, Section 100 of CPC is required to be noticed, which provides that an appeal shall lie from the decree passed in an appeal, if the High Court is satisfied that the case involves a substantial question of law. The term "substantial question of law" has been explained by the Supreme Court in the case of **State Bank of India and Ors. vs. S. N. Goyal**, **(2008) 8 4 SCC 92.** The Supreme Court after noticing the provisions of Section 100 of CPC, has explained as to what constitutes a substantial question of law, in the following manner:

> "9.1) Second appeals would lie in cases which involve substantial questions of law. The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. In the context of section 100 CPC, any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing in the final outcome, will not be a substantial question of law. Where there is a clear and settled enunciation on a question of law, by this Court or by the High Court concerned, it

cannot be said that the case involves a substantial question of law. It is said that a substantial question of law arises when a question of law, which is not finally settled by this court (or by the concerned High Court so far as the State is concerned), arises for consideration in the case. But this statement has to be understood in the correct perspective. Where there is a clear enunciation of law and the lower court has followed or rightly applied such clear enunciation of law, obviously the case will not be considered as giving rise to a substantial question of law, even if the question of law may be one of general importance. On the other hand, if there is a clear enunciation of law by this Court (or by the concerned High Court), but the lower court had ignored or misinterpreted or misapplied the same, and correct application of the law as declared or enunciated by this Court (or the concerned High Court) would have led to a different decision, the appeal would involve a substantial question of law as between the parties. Even where there is an enunciation of law by this court (or the concerned High Court) and the same has been followed by the lower court, if the appellant is able to persuade the High Court that the enunciated legal position needs reconsideration, alteration, modification or clarification or that there is a need to resolve an apparent conflict between two view points, it can be said that a substantial question of law arises for consideration. There cannot, therefore, be a strait-jacket definition as to when a substantial question of law arises in a case. Be that as it may.

Procedure relating to second appeals 9.2) We may next refer to the procedure relating to second appeals as evident from section 100 read with order 42 Rules 1 and 2, of Code of Civil Procedure :

(a) The appellant should set out in the memorandum of appeal, the substantial questions of law involved in the appeal.

(b) The High Court should entertain the second appeal only if it is satisfied that the case involves a substantial question of law.

(c) While admitting or entertaining the second appeal, the High Court should formulate the substantial questions of law involved in the case.

(d) The second appeal shall be heard on the question/s of law so formulated and the respondent can submit at the hearing that the second appeal does not in fact involve any such questions of law. The Appellant cannot urge any other ground other than the substantial question of law without the leave of the court.

(e) The High Court is at liberty to reformulate the substantial questions of law or frame other substantial question of law, for reasons to be recorded and hear the parties or such reformulated or additional substantial questions of law.

9.3) It is a matter of concern that the scope of second appeals and as also the procedural aspects of second appeals are often ignored by the High Courts. Some of the oft-repeated errors are:

(a) Admitting a second appeal when it does not give rise to a substantial question of law.

(b) Admitting second appeals without formulating substantial question of law.

(c) Admitting second appeals by formulating a standard or mechanical question such as "whether on the facts and circumstances the judgment of the first appellate court calls for interference" as the substantial question of law.

(d) Failing to consider and formulate relevant and appropriate substantial question/s of law involved in the second appeal.

> (e) Rejecting second appeals on the ground that the case does not involve any substantial question of law, when the case in fact involves substantial questions of law.
> (f) Reformulating the substantial question of law after the conclusion of the hearing, while preparing the judgment, thereby denying an opportunity to the parties to make submissions on the reformulated substantial question of law.
> (g) Deciding second appeals by re-appreciating evidence and interfering with findings of fact, ignoring the questions of law.
> These lapses or technical errors lead to injustice and also give rise to avoidable further appeals to this court and remands by this court, thereby prolonging the period of litigation. Care should be taken to ensure that the cases not involving substantial questions of law are not entertained, and at the same time ensure that cases involving substantial questions of law are not rejected, as not involving substantial questions of law.

10) From a perusal of the aforesaid enunciation of law on the subject, it is clear that if an appeal does not involve a substantial question of law, the same cannot be entertained. At the same time, the Court has to ensure that the cases involving substantial question of law are not to be rejected. A substantial question of law would mean a question of law, which has not been finally settled by the Courts. In case, settled law is misinterpreted or ignored by the Court below, it would give rise to a substantial question of law. The question of law, which has not been finally settled by the Court, would also be a substantial question of law and finally, if it is shown that question of law already settled needs reconsideration that would also give rise to a substantial question of law.

11) In light of the aforesaid position of law, let us now advert to the grounds of challenge that have been raised by the appellant through the medium of instant appeal. According to the appellant, the findings of the courts below as regards the status of the appellant/plaintiff vis a vis the suit property are perverse inasmuch as it has been established that the appellant was in possession of the suit property for decades together and that would give an inference of tenancy in his favour. In this regard, learned Senior Counsel

appearing for the appellant has relied upon the judgment of the Supreme Court in the case of **C. M. Beena and anr v P. N. Ramachandra Rao, AIR 2004 SC 2103.** Learned counsel for the appellant has contended that in terms of Circulars dated 20.08.1987 and 27.02.1988 issued by the respondent-Board, tenants of the Board including the appellant were asked to deposit the rent, which clearly shows that the status of the appellant was that of a tenant and not a licensee.

12) In terms of section 52 of the Easements Act, a license is grant of a right to do or to continue to do, in or upon immovable property of grantor, something which would be unlawful in absence of such right. So in the case of license, no right or interest is created in the party to which it relates. The possession and control of the property in case of the licence remains always with the licensor. So far as lease is concerned, it creates an interest in the property. A lessee has a right to remain in possession of the property for the period mentioned in the lease. So the distinction between license and lease is that in the case of license, no interest in the property which is subject matter of licence is created in favour of the licensee whereas in the case of lease, the lessee acquires an interest in the property to remain in its possession till the conclusion of the lease period. In fact in a license, the licensee is only given a right to use the property, the possession always remains with the licensor whereas in the case of lease, the possession remains with the lessee and he is free to use it in the manner he chooses. The distinction between the lease and license has remained a subject matter of discussion in a number of judgments passed by the Supreme Court and by this Court. In this regard, it would be apt to notice the ratio laid down in some of these judgments.

13) The Supreme Court in the case of **Associated Hotels of India Ltd v R. N. Kapoor, AIR 1959 SC 1262**, has, while laying down the tests for ascertaining whether a particular transfer is a lease or license, observed as under:

> "the following preposition may therefore be taken as well established 1) To ascertain whether a document creates a licence or lease, the substance of document must be preferred to the form. 2) The real test is the intention of parties-whether they intended to create lease or a licence 3) If the document creates an interest in the property, it is a lease but if it permits another to make use of the property of which legal possession continues with owner, it is a license and 4) If under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant, but circumstances may be established which negative the intention to create a lease"

14) Again this Court in the case of **Santosh Raina and others vs Mata Vaishno Devi Shrine** reported as **(2003) 2 SLJ 551** has held that mere use of expression "rent" will not alter the essential character of deed and nature of transaction. Similar proposition of law has been laid down by this Court in the case, titled, **Prem Nath and others vs. Shri Mata Vaishno Devi Shrine Board**, reported as **AIR 2003 J&K 1**. In the aforesaid judgment, this Court has held that to ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form and real test is the intention of the parties, whether they intended to create lease or license.

15) From the foregoing analysis of law on the subject, it is clear that the question whether a relationship between two parties is that of a landlord and tenant or licensor and licensee depends upon the facts and circumstances of the case and it does not depend upon the use of expression in the documents/receipts that may have been executed by the parties. The nature of

the transaction between the parties is the determinative factor for ascertaining whether such transaction is lease or a license.

16) Coming to the facts that have been proved before the trial court, concurred by the 1st appellate court, it is shown that the appellant/plaintiff was allowed to sell Barf Malai from Darshani Deodi up to Bhawan of Mata Vaishno Devi Ji and for this purpose, he was allowed to use the Thara, which is subject matter of the suit. It was only a permission granted to the appellant to use the aforesaid space but control and the possession of the said space has always remained with the defendant-Board. Thus, it is a clear cut case of license. These are concurrent findings of fact arrived at by both the courts below, which are based upon evidence led by the parties. The same cannot be upset in second appeal.

17) So far as the contention of the learned counsel for the appellant that Circulars dated 20.08.1987 and 27.02.1988 issued by the respondent-Board have used the expression "rent" and as such, it can be inferred that the relationship between the appellant and the respondent-Board was that of a landlord and tenant is concerned, the same is without any merit for the reason that it is a settled law that mere use of expression rent will not alter the essential character of the nature of transaction between the parties, which in the instant case, has been proved to be a license.

18) Learned counsel for the appellant has also contended that the respondent-Board has withheld the documents relating to the transaction between the parties. According to the learned counsel, had these documents been produced by the respondent-Board, it would have come to the fore that the relationship between the appellant and the Dharamarth Trust was that of a

tenant and the landlord and the similar relationship continued between the appellant and the respondent-Board.

19) In the above context, if we have a look at the statement of Mandeep K. Bandhari, Chief Executive Officer of the respondent-Board, he has clearly stated that as per record, the plaintiff was granted the license for Dharamarth Trust for a period of six months for selling Barf Malai from Darshani Deodi to Bhawan of Mata Vaishno Devi Ji and the license fee was to be paid by the licensee to the licensor. He has denied the suggestion that the plaintiff/appellant was tenant of Dharamarth Trust and was allotted a piece of land measuring 72.59 sq. ft. at Pharati Kho. He has also denied that the plaintiff was paying any rent in respect of the said Thara. He has gone on to state that the plaintiff/appellant was never a tenant and he never became the tenant of the respondent-Board. He has clarified that only permission was granted to the plaintiff to sell Malai Barf on the route. According to him in the year, 1977, tenders were invited for grant of license for six months and this included grant of license for selling Malai Barf from Darshani Deodi to Bhawan of Mata Vaishno Devi Ji. It is in pursuance to this tender notice, the plaintiff has been granted the license for selling Malai Barf. There is nothing in the cross examination of the witness to discredit his statement.

20) During the cross examination of the witness, the appellant has not asked the officer to produce the record of the Board in support of his assertions, meaning thereby that the appellant has accepted whatever the witness was speaking on the basis of the record. The appellant has never sought production of record from the respondent-Board by making an appropriate application before the trial court. In these circumstances, the stand of the respondent-

Board that the appellant was granted license to sell Malai Barf in pursuance of the tender notice issued by the Dharmarth Trust in the year 1977 has rightly been accepted by the trial court and affirmed by the learned 1st appellate court. Therefore, having regard to the nature of transaction between the parties, the mere use of expression "rent" in the circulars referred to by the learned Senior Counsel for the appellant would not change the character of the relationship between the parties. Thus, there is no scope for interfering in the concurrent findings of fact recorded by the courts below that the appellant was a licensee and that his license had been revoked. No question of law much less a substantial question of law on this aspect of the matter arises in the case.

21) Learned counsel for the appellant has laid much emphasis on the contention that once it is shown that the appellant was in possession of the suit space for a number of decades, the courts below were not right in refusing the decree of permanent prohibitory injunction in his favour. It has been contended that having regard to the settled possession of the appellant over the suit space, he could only be evicted from there by adopting due process of law and not by use of force. Reliance in this regard has been placed upon the judgment of the Supreme Court in the case of **Krishna Ram Mahale(Dead) by his LRs v Mrs. Shobha Venkat Rao, AIR 1989 SC 2097.**

22) It is true that from the evidence on record, it has been established that the appellant was running the business of selling Malai Barf from the suit space with the permission of the respondent-Board but as already held possession of the suit space always remained with the respondent-Board as the status of the appellant was that of a licensee and not a lessee. Since it cannot be stated that the plaintiff/appellant was in possession of the suit space as such, no injunction

against his eviction could have been passed in his favour. The permanent prohibitory injunction sought by the appellant was consequential in nature as is clear from the plaint filed by the appellant before the trial court. It was dependent upon the determination of his status as a tenant. Once the appellant failed to prove that he was a tenant of the suit space, the consequential relief of injunction could not have been granted in his favour.

23) Even if it is assumed that the appellant was in possession of the suit space, the question that would arise is whether his eviction in accordance with law would mean filing of a separate suit for eviction by the defendant-Board against him. To find an answer to this question, we need to notice the position of law as discussed in various judicial precedents on this aspect of the matter.

24) In **M/s. G. M. Modi Hospital and Research Centre Medical Science vs. Sh. Shankar Singh Bhandari and others, AIR 1996 Delhi 1,** a Single Judge of the Delhi High Court has discussed the law on the subject in the following manner:

> "15. A similar question was mooted before the Court of Appeal in England in Hemmings and Wife vs. The Stoke Pages Golf Club, Limited, and another 1920 (1) K.B. 720. The Court of Appeal reversed the judgment of the trial-Judge who granted injunction. To appreciate the question, it is necessary to notice the facts. The plaintiff Hemmings was in the employment of Stoke Poges Golf Club Ltd. A cottage was given to the plaintiff by virtue of his being the employee of the Golf Club. He was not a tenant. In May 1918 he left the services and worked for a neighbouring farmer. Subsequently, a notice was served on him to deliver possession of the cottage. Thereupon, possession was taken from-him. He filed then the suit to recover damages for forcible entry and for assault on the basis of the alleged infringement by the defendants of the statute 5 Ric. 2, stat. 1, c. 7, which enacts that a forcible entry is a punishable offence. The learned trial judge granted the relief prayed for by the plaintiff and the Court of Appeal, as stated above, differed from the view taken by him. The Court of Appeal noticed the distinction between the case of a person who occupies a premises by virtue of employment is servant and the case of a person who Occupies as atenant. The plaintiff therein relied upon the case in

> Newton us. Harland, 1 M & G page 644 for the proposition that nobody can take possession without any recourse to court of law and any forcible entry is a crime in law. The learned Judge Justice Erskine said in that case "There are, it is true, many cases (some of which were cited at the argument) in which it has been held that no action for trespass quare clausurn freight will lie at the suit of a tenant against the landlord for a forcible entry after the expiration of th term. The earlier authorities upon .this point are collected in kDalton's Justice, c. 129, p. 431; and Turner v. Meymott. (5) But then the reason for this is also given, namely, that the plaintiff, having no title to the possession as against his landlord, can have no right of action against him as a trespasser, for entering upon his own land, even with force; for entering upon his own land, even with force; for, although the law had been violated by the defendant, for which he was liable to be punished under a criminal prosecution, no right of the plaintiff had been infringed, and no injury had been sustained by him for which he could be entitled to compensation in damages;" and by Fry J. in Beddall v. Maitland (6), where he says: "He can recover no damages for the entry, because the possession was not legally his, and he can recover none for the force used in the entry, because, though the statute of Richard II. crates a crime, it gives not civil remedy." The Court of Appeal dealt with this case at length and found that this case was not accepted by any Court subsequently and that was no longer good law. After having considered this case, the learned Judges came to the conclusion "In the present case the defendants were undoubtedly entitled to possession of the cottage. The plaintiffs had no right and did not pretend they had any right to remain there. Assuming, but without deciding, that the entry by the defendants was a forcible entry, the right to possession was in the defendants, and the acts which are alleged as giving the plaintiffs a right of action were done in defense of their right to possession. Blades v. Higgs (2); and of the possession which they had acquired by the allegsed forcible entry. I have no fear that the present decision will encourage lawlessness as was suggested for the respondent. A person who makes a forcible entry upon lands and tenements renders himself liable to punishment, and he exposes himself also to the civil liability to pay damages in the event of more force being used than was necessary to remove the occupant of the premises, or in the event of any want of proper care in the removal of his goods. If the view of the law expressed in Newton v. Harland (3) is correct it must follow that the law confers upon the lawless trespasser a right of occupancy the length of which is determined only by the law's delay."

25) Again in the case of **Pran Nath and others** (supra), this Court held that a licensee' s possession is not that of a person in settled possession and he is

not, thus, entitled to say that he has right to continue in possession until evicted under some decree or order of the court.

26) In another judgment of the Delhi High Court in the case of **Thomas Cook (India) Limited vs Hotel Imperial, 2006 (15) ILR Delhi 90,** the question as to what is meant by due process of law came up for discussion before the said court. In this context, paras 27 and 28 of the judgment are relevant and the same are reproduced as under:

> "27. This brings me to the second aspect of `due process of law'. It was urged by Mr Kaul that even if the plaintiff was in unlawful possession it could only be evicted by due process of law and therefore the plaintiff was entitled to an order of injunction preventing the defendants from removing the plaintiff from the said two rooms except through due process of law. It must be made clear that this argument fails in the context of this case because the plaintiff was never in possession and therefore there is no question of dispossession in the sense usually understood. The plaintiff had a mere right to use, such right was revocable, it has been revoked and the plaintiff is entitled under section 63 of the Indian Easements Act, 1882 to a reasonable time to leave the premises and take away its goods. The argument also fails because by rushing to court the plaintiff has indeed invited a judicial determination of its status. If it got an order of injunction it would ensure to its benefit. But, if it did not, then it can't be heard to say that this court has to grant an injunction all the same because otherwise it would give a license to the defendants to forcibly throw out the plaintiff without filing a suit for possession.
>
> 28. The expressions `due process of law', `due course of law' and `recourse to law' have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed `forcibly' by the true owner taking law in his own hands. All these expressions, however, mean the same thing -- ejectment from settled possession can only be had by recourse to a court of law. Clearly, `due process of law' or `due course of law', here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner. Now, this `due process process' or `due course' condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the `bare minimum' requirement of `due process' or `due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e., for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the `recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the

> plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law."

27) The aforesaid judgment of the Delhi High Court has been quoted with approval by a Three Judge Bench of the Supreme Court in the case of **Maria Margarida Sequeria Fernandes and others v Frasmo Jack de Sequeria (Dead) through LRs, AIR 2012 0 SC 1727.**

28) From the foregoing analysis of law on the subject, it is clear that due process of law or due course of law means that a person in a settled possession cannot be evicted without a court of law having adjudicated upon his rights *qua* the true owner, meaning thereby that rights of the parties have to be adjudicated by a court of competent jurisdiction. It is also clear that it is immaterial as to which of the parties brings action to a court. What is material is that rights of the parties have to be adjudicated by the competent court. Once this is done, the due process of law or due course of law can be stated to have been followed. What has been emphasized by the Supreme Court in **Krishna Ram Mahale's case (supra)** is that the person in a settled possession cannot be dispossessed without adopting due process of law. Once this requirement of due process of law is followed, a trespasser or a licensee, who has overstayed, can be evicted by the true owner by using reasonable force. The only requirement is that there has to be determination of the rights of the parties by the competent court, whoever may have brought action in the court.

29) In the instant case, the action was brought to the court by the appellant/plaintiff and after full dressed trial, the learned trial court found that the status of the plaintiff/appellant was that of a licensee and after the expiry of license his status was reduced to that of an unauthorized occupant. This finding has been upheld by the 1st appellate court. Thus, the rights of the parties have

been determined by the competent court after a full dressed trial meaning thereby that due process of law has been followed in the instant case. In view of the clear position of the law on this issue, no question of law much less a substantial question of law arises in this case on this aspect of the matter as well.

30) It has been contended by the appellants that the judgment of the 1st appellate court does not conform to the provisions contained in Order 41 Rule 31 of the CPC. If we have a look at the judgment of the 1st appellate court, it has dealt with all the contentions that were raised by the appellant while assailing the judgment of the trial court. The learned appellate court has recorded its findings on each issue after discussing the evidence on record. It is not necessary that the appellate court should reproduce the statements of the witnesses while passing its judgment. The reference to relevant portions of the statements of witnesses to support the conclusion is good enough to conform to the requirements of law. Even otherwise, the contents of the judgment passed by the appellate court would show that the Court has applied its mind to the facts and drawn its independent conclusion on the basis of applicable law after formulating the points for determination. The judgment of the 1st appellate court demonstrates substantial compliance to Order 41 Rule 31 CPC and no prejudice can be said to have been caused to the other side.

31) For what has been discussed herein before, this Court is satisfied that the trial court as well as the 1st appellate court, have passed well reasoned judgments after rendering findings on each issue after proper application of mind and appreciation of evidence on record. There is neither misreading of relevant evidence nor inadmissible evidence has been considered. The

judgment of the 1st appellate court satisfies the requirements of Order 41 Rule 31 CPC as well. No question of law, much less, substantial question of law arises in the present appeal. Therefore, this Court is not inclined to interfere with and upset the findings of the facts in the judgments and decrees of the courts below in dismissing the suit of the appellant.

32) The appeal is, therefore, found to be devoid of any merit. The same is, accordingly, dismissed.

(SANJAY DHAR)
JUDGE

Jammu
20.09.2023
Rakesh PS

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No