

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 632 of 2015
Date of decision : December 3, 2015

Karnail Singh and another

..... Petitioners

Versus

Shakuntla Devi and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Surinder Mohan Sharma, Advocate
for the petitioners.

Ms. Ravinder Kaur Manaise, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The petitioners-plaintiffs are aggrieved of the impugned order whereby the application filed by the respondents-defendants under Order 7 Rule 11 calling upon the petitioners-plaintiffs to pay ad valorem court fee as the pith and substance of the claim in the suit, is for possession of residential house. In essence, the suit for mandatory injunction would not lie has been allowed.

Learned counsel for the petitioners submits that plaintiff-Gareeb Singh was real brother of petitioners and was given permissive possession of the property in dispute who along with his family was residing therein. Unfortunately, Gareeb Singh died on 2.8.2011 and a legal notice dated 1.9.2012 was served upon his legal

representative, that his status is nothing but that of a licensee and in order to seek possession a simpliciter suit would lie and not for possession, therefore rightly so the suit has been properly valued. The courts below have committed illegality and perversity in allowing the application calling upon the petitioners-plaintiffs to pay the ad valorem court fee.

Learned counsel appearing on behalf of the respondents submits that the relationship of licensor and licensee extinguished on demise of Gareeb Singh and the status of the petitioner-plaintiff is nothing but that of a trespasser, therefore, remedy, if any, for the petitioners-plaintiffs is to seek possession and not mandatory injunction. The petitioners-plaintiffs are required to pay ad valorem court fee on the basis of market value of land, thus, there is no illegality and perversity in the impugned judgment of the court below.

I have heard learned counsel for the parties and appraised the paper book.

The proposition of law viz-a-viz claiming of relief of mandatory injunction against the licensee where the suit has been filed immediately after revocation of the license is no longer res integra. However, in the instant case, the facts as noticed above, are different inasmuch as, it was Gareeb Singh's license. The, relationship of licensor and licensee was between plaintiffs and Gareeb Singh and not with his legal representatives. As per Section 52 of the Indian Easement Act, 1982 relationship of licensor and licensee is not inheritable or transferable right but is personal. In

order to lend support, I take aid of the judgment rendered by the Madras High Court in **Chinnan and others Vs. Ranjithammal 1931 AIR (Madras) 216** since Gareeb Singh died the status of the legal representatives would be that of trespassers, much less unauthorized and claim would be of possession and not mandatory injunction. Section 39 of Specific Relief Act, 1963 provides a remedy to the petitioners-plaintiffs where there is a breach of obligation. The breach of obligation was personal between the licensor and licensee and not that of the legal representatives.

Keeping in view the aforementioned facts, I am of the view that finding rendered by the trial court calling upon the petitioners-plaintiffs to pay ad valorem court fee as it would be a suit for possession is a correct proposition of law.

I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits. Accordingly the same is dismissed.

Be that as it may, the petitioners-plaintiffs shall be at liberty to seek amendment of the plaint. In essence, claim and occupation charges.

**(AMIT RAWAL)
JUDGE**

**December 3, 2015
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