

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

120

Civil Revision No.6477 of 2015

Date of Decision:13.10.2015

Sudhir Sharma

....petitioner

Versus

Bal Krishan Sharma and another

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Ms.Shashi Ghuman, Advocate
for the petitioner

ARUN PALLI, J.(ORAL):-

Application for ad interim injunction, moved by the petitioner-plaintiff had since been granted by the trial Court, vide order dated 20.04.2012, and the defendants were restrained from causing dispossession of the plaintiff from the suit property. As the appeal preferred by defendants No.1 and 2, against the said order, was accepted vide order dated 27.08.2015 and the order dated 20.04.2012 was set aside, plaintiff is before this Court, vide this revision petition.

In a suit filed by the plaintiff, he prayed for a declaration that he was the owner in possession of half share in a land measuring 7 marlas, out of the total land measuring 27 kanals 11 marlas, comprised in khasra numbers duly depicted in the plaint. A decree for injunction was also prayed for, restraining defendant No.1 from alienating the suit property and also from causing forcible

dispossession of the plaintiff. It was maintained that defendant No.1 happened to be the father of the plaintiff. And defendants No.2 and 3 were his real brothers and residing separately. Defendant No.1 was the owner of the house in question, which was a double storeyed house. And in the year 1999, with the consent of his father, plaintiff constructed the first floor from his personal funds, as his father had orally agreed to transfer half share in the suit property in his name. Since then, plaintiff with his family was residing in the said portion. But, on account of certain differences between the plaintiff and defendant No.1, he was asked to vacate the portion in his possession. So much so, on 13.03.2012, defendants, in connivance with each other, tried to dispossess the plaintiff and his family. Thus, the suit.

In defence, it was pleaded inter alia, that the possession of the plaintiff over a part of the suit property was merely of a licensee. It was denied that the plaintiff had constructed the first floor of the property out of his personal funds. Defendant No.1 never agreed to transfer half share of the suit property in favour of the plaintiff. In fact, defendant No.1 had purchased the plot measuring 7 marlas, vide sale deed dated 16.08.1994 and, post sale, he had constructed ground floor with his own funds. First floor of the house was constructed by defendant No.1, in the year 2002. Since plaintiff requested defendant No.1, after his marriage to allow him to reside on the first floor, he was permitted to occupy that portion as a licensee. Since plaintiff and his wife started misbehaving with defendant No.1, vide publication in the newspaper i.e. 'Punjab Kesari'

on 20.10.2011, he was disinherited from his movable and immovable property. Resultantly, defendant No.1 revoked the license granted to the plaintiff on 01.02.2012. As he still failed to vacate the portion in his possession, vide registered notice dated 29.03.2012, the license granted to the plaintiff was formally revoked.

Trial Court granted the injunction prayed for, as plaintiff was already in possession of a part of the house in question. It was observed that since even a trespasser in settled possession, cannot be dispossessed, except in due course of law, plaintiff too could be dispossessed only in accordance with law.

However, in an appeal preferred by defendants No.1 and 2, the order dated 20.04.2012, granting injunction to the plaintiff, was set aside and the application moved by the plaintiff, in this regard was dismissed.

I have heard learned counsel for the petitioner and perused the record.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the revision petition is wholly devoid of merit and, is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Ex facie, defendant No.1 is the owner of the house in question. Nothing was brought on record by the plaintiff to show that he had any right, title or interest therein. The plea that he had constructed the first floor, out of his personal funds, remained unsubstantiated for lack of any cogent or credible material. Likewise, nothing was brought on record to show that pursuant to any family

settlement or otherwise, defendant No.1 had transferred ½ share in the house in favour of the plaintiff. That being so, plaintiff occupied a portion of the house only as a licensee, and after revocation of the license, his possession was wholly unlawful. The submission; that since plaintiff was in possession since the year 2000, he could not be dispossessed except in due course of law, cannot be countenanced. No doubt, a person, in an unlawful, but long, settled and established possession of a property, cannot be dispossessed except in due course of law, for he occupies the property, in his own right, which stems from his long and settled possession. Whereas, the plaintiff was in permissive possession of the portion in his occupation as a licensee.

Learned counsel for the petitioner could not point out as to how the conclusion that has been recorded by the first Appellate Court was either contrary to the position on record or suffered from any material illegality. No other argument was advanced.

That being so, no interference in exercise of revisional jurisdiction under Article 227 of the Constitution of India is warranted. The petition being devoid of merit is accordingly dismissed. Needless to assert that this order shall not constitute any expression of opinion on the merits of the case of either party.

13.10.2015

neenu

(ARUN PALLI)
JUDGE