

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2648 of 2013 (O&M)
Date of decision : August 26,2015

Sita Devi and others

..... Appellants

Versus

Sheela and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Anil Kshetarpal, Senior Advocate with
Mr. Piyush Aggarwal, Advocate
for the appellant.

Mr. Kunal Dawar, 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 challenge in the present appeal is to the impugned judgment and decree passed by the trial court whereby the suit for mandatory injunction qua directing the appellants-defendants to hand over the vacant possession of the suit property is decreed and appeal filed against the same by the appellant-defendant has also been dismissed.

Mr. Anil Kshetarpal, learned counsel appearing on behalf of the appellant-defendant submits that the appellant had also filed a counter claim by taking the benefit of Section 53-A of the

Transfer of Property Act, 1882 owing to the fact that in the written statement it was categorically stated that the appellants-defendants had become owner of 50% of the suit property by way of sale deed dated 19.3.1984 Ex. D-4. The counter claim has also been dismissed. He further submits with regard to the share of 50% an agreement to sell dated 23.1.1985 had also been entered into between the respondents-plaintiffs and appellants-defendants. Copy of the same is annexed as Ex.D-1. Both the courts below have committed illegality and perversity in not referring to the aforementioned documents and granted decree of mandatory injunction rendering the appellants-defendants as licensee, thus submits that following questions of law arise for determination by this Court and possession is admittedly with the appellants-defendants.

- i) Whether a person already in possession is entitled to protect his possession under Section 53-A of the Transfer of Property Act on the strength of an agreement to sell in which entire payment has been made?
- ii) Whether a suit for mandatory injunction can be maintained against a licensee when termination of the license is not proved?
- iii) Whether a co-owner can file a suit for mandatory injunction against another co-owner?

Mr. Kunal Dawar, learned counsel appearing on behalf of the respondents submits that the courts below have not committed any illegality and perversity and the orders have been

passed on the basis of the documents Ex.D-1 to D-4. Therefore, no substantial question of law arise for determination by this court and no interference is warranted.

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

Section 52 of the The Indian Easement Act,1882 deals with grant of license. The relationship of licensor and licensee has to be established where a right to live in the property has been challenged by the licensee. However with or without license suit for mandatory injunction is maintainable only in those circumstances where under revocation of the license, proceeding has been initiated within few months and in case of lapse of some time the suit for possession would be maintainable. In view of the ratio decidendi culled out in **Th Milka Singh and others Vs. Th. Diana and others 1964 AIR J&K 99** and reiterated by the Hon'ble Supreme Court in **Sant Lal Jain Vs. Avtar Singh 1985 AIR (SC) 857.** A co-owner cannot be branded as a licensee. It is a matter of record that the appellant-defendant had become a owner owing to execution of the sale deed dated 19.3.1984 Ex. D-4 to extent of 50% and even for the remaining 50% an agreement to sell had been affected but the outcome of the same is still a mystery. The remedy, if any, for the parties is to seek specific performance of the agreement to sell and not the manner in which the remedy has been sought to seek possession of the property.

In my view, both the courts below have committed illegality in not noticing the position of law and as well as the

documents, therefore, there has been misreading of the document. Thus, in my view the substantial questions of law noticed above are answered in favour of appellants-defendants and against the respondents-plaintiffs.

The impugned judgment and decree of both the courts below are hereby set aside and the appeal is accordingly allowed.

(AMIT RAWAL)
JUDGE

August 26 , 2015
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