

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

**Regular Second Appeal No.1367 of 2015 (O&M)
Date of decision:10.04.2015**

Kiran Bala

.....Appellant

Versus

Mrs. Bimla and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Mohit Jaggi, Advocate,
for the appellant.

Ritu Bahri, J.

CM No.3871-C of 2015

The application is for permission to make good deficiency of Court fee.

For the reasons mentioned in the application, same is allowed and the appellant is permitted to make up deficiency in Court fee.

CM Nos.3872-3873-C of 2015

In view of the averments mentioned in the applications, delay in filing and re-filing of the appeal is condoned.

Misc. applications stand allowed accordingly.

RSA No.1367 of 2015

This appeal has been filed against the judgment dated 22.09.2014 passed by the District Judge, Ambala, dismissing the appeal filed by defendant No.1-appellant against the judgment and decree dated 11.11.2013 passed by the Civil Judge (Junior Division), Ambala, whereby suit filed by the plaintiff-respondent No.1 for possession by way of ejectment of the

defendants had been partly decreed directing the appellant and defendant Nos. 2 to 5 to hand over vacant possession of the suit property to the plaintiff.

Smt. Bimla-plaintiff (respondent No.1 herein) had no issue out of her wedlock. Therefore, she brought up an orphan child namely Kiran Bala-defendant No.1 (appellant). However, there was no deed of adoption in that regard. After her marriage, Kiran Bala-defendant No.1 used to come to the house of plaintiff along with her husband (defendant No.2) and children (defendant Nos. 3 to 5). They were allowed to reside with the plaintiff in a portion of the house comprising one room-cum-kitchen, joint use of toilet and bathroom for residential purpose as licensee under her on account of relationship of love and affection. Later on, the defendants started harassing the plaintiff on one pretext or the other. Therefore, the plaintiff requested the defendants to vacate the premises in question in their possession, but they refused to do so. Rather, they started teasing the plaintiff-respondent No.1. Thereafter, the plaintiff-respondent No.1 filed this suit.

Notice of the suit was served upon the defendants, but they did not appear before the Court and were proceeded ex parte vide order dated 13.08.2010. Defence of defendant No.1-appellant was struck off vide order dated 22.11.2010.

Trial Court, after going through the evidence led by the plaintiff-respondent No.1, observed that although the plaintiff had permitted enjoyment of suit property to the defendants, but she had specifically stated that now she does not want to keep them with her. She had terminated their licence by giving a legal notice dated 29.12.2009 under Section 106 of the Transfer of Property Act, 1882. The suit was partly decreed and the

defendants were directed to hand over vacant possession of the suit property to the plaintiff within one month.

Kiran Bala-defendant No.1 filed an appeal against the said judgment before the lower appellate Court, whereas Smt. Bimla-plaintiff filed cross-objections for grant of mesne profits at the rate of Rs.1500/- per month for using the premises in dispute w.e.f. 29.12.2009. The appeal filed by defendant No.1 was dismissed as the plaintiff-respondent No.1 was found to be owner of the property/house in question. The lower appellate Court further held that there was no relationship of daughter and mother between Smt. Bimla-plaintiff and Kiran Bala-defendant No.1 (appellant). Defendant No.1-appellant had filed a separate suit for declaration about her relationship with plaintiff-respondent No.1, which was pending. Once, the plaintiff-respondent No.1 had terminated the licence of the defendants by serving a legal notice dated 29.12.2009, Ex.PW1/E, she had a right to mesne profits.

The house in question was purchased by plaintiff-respondent No.1 in the year 1969 when defendant No.1-appellant was not born. Hence, the plea of *benami* transaction was rejected, as it could not be taken in defence by the defendants in view of the judgment delivered in **Parveen Kumar and another Vs. State of Punjab**, 2004 (2) Civil Court Cases (P&H) 286. Ultimately, the appeal filed by defendant No.1-appellant was dismissed and the plaintiff-respondent No.1 (cross-objector) was held entitled to charges for use and occupation of portion of the house in dispute at the rate of Rs.1500/- per month from the date of the decree passed by the trial Court and not from the date of notice of termination of licence.

After perusing the judgments passed by the Courts below, it is

apparent that defendant No.1-appellant was not an adopted daughter of the plaintiff-respondent and she had been allowed to use a portion of the house in question by the owner (plaintiff) at her own sweet will. After termination of the licence vide notice, Ex.PW1/E, the plaintiff-respondent No.1 had a right to claim possession of the house in question. She was held owner of the house, which was purchased by her in the year 1969 vide sale deed, Ex.PW1/B. Therefore, the suit of the plaintiff-respondent No.1 has been rightly decreed by both the Courts below.

Having examined the impugned judgments passed by both the Courts below, no illegality, much less perversity has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

10.04.2015
ajp

(RITU BAHRI)
JUDGE