

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 2327 of 2015 (O&M)
Date of decision 17.08. 2015.

Harjinder Kaur and another

..... Appellants.

versus

Tarsem Lal

..... Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers 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?

Present : Ms. Deepali Puri, Advocate for the appellant.

K.C.PURI, J.

Unsuccessful defendants have directed this appeal against the judgment and decree dated 6.4.2015 passed by Shri Lalit Kumar Singla, Additional District Judge, Kapurthala vide which the appeal preferred by them against the judgment and decree dated 18.02.2014 passed by Shri Amit Thind, the then learned Civil Judge (Senior Division), Kapurthala was dismissed.

2. Brief facts of the present case are that plaintiff Tarsem Lal filed suit for permanent injunction pleading therein that he is owner in possession of the land fully described in the head note of the plaint and shown in the rough site plan. Defendant No.2 is the real brother of the plaintiff and

defendant No.1 is the sister-in-law of the plaintiff and wife of defendant No.2. The house in question was given to the defendants as a licensee for some period at the request of the defendant No.2, as the plaintiff was residing abroad but when the plaintiff revoked the licence of the defendant No.2 to remain in the house in dispute and asked him to vacate the house, then the defendant No.2 got filed a suit against the plaintiff and his wife titled as Harjinder Kaur vs. Tarsem Lal and others and is pending in the Court of Civil Judge, Sr. Division, Kapurthala and is fixed for 17.1.2008 for the evidence of the plaintiff. Defendant No.1 filed suit on the basis of false facts, which has been denied by the plaintiff and the plaintiff is actual owner in possession of the house in dispute. The attorney of the plaintiff approached the defendant again and requested them that he did not want to keep the defendants as licensee in the house in dispute and the plaintiff has already revoked the licence as mentioned in the earlier paras but of no use. Hence this suit.

3. On notice defendants appeared and filed joint written statement taking preliminary objections as to maintainability and locus standi or cause of action. The plaintiff is stopped by his own act and conduct, omission and commission to file the present suit. Plaintiff has not come to the Court with clean hands and have suppressed the real facts from this Court, knowingly and willfully with mala-fide intention, as such the plaintiff is not entitled to any relief as claimed in the suit. In fact, the defendants are in continuous possession of the house in dispute. The defendants are owners of the super structure of the house constructed over the land measuring 6 marlas, as the same has been got constructed by the

defendants by spending huge money from their own pocket. Defendant No.2 worked abroad and earned handsome money and the said amount was sent to defendant No.1, who has raised the construction over the plot in question. Even the defendants have also got installed an electric meter in the house in dispute, which is running in the name of defendant No.1 and the consumption charges thereof are also being paid by the defendants. The defendants have constructed three rooms and one Varandaha. The defendants have also sown guava tree, Deg tree and neem tree. The land underneath the house in dispute was purchased jointly by the defendants and plaintiff, but the plaintiff being clever person and being elder brother got registration of the said land in his name by playing fraud upon the defendants. The suit is bad in the eyes of law and is against the principle of res-judicata.

4. On merits, defendants denied all the averments of the plaintiff and prayed for dismissal of the suit.

5. Replication was filed. From the pleadings of the parties, following issues were framed : -

1. Whether the plaintiff is entitled to mandatory injunction as prayed for ? OPP
 2. Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP
 - 2A. Whether the suit is not properly valued for the purpose of Court fee ?OPD
 3. Whether the defendants are licensee in property in dispute ?OPD
 4. Relief.
6. The parties have led their respective evidence on the aforesaid

issues. The trial Court after appraisal of the evidence decreed the suit of the plaintiff vide judgment and decree dated 18.02.2014.

7. Feeling aggrieved, the plaintiff preferred First appeal. The learned Additional District Judge, Kapurthala vide judgment and decree dated 06.04.2015 dismissed the appeal of the plaintiff.

8. Still feeling dissatisfied with the aforesaid judgments and decrees, the present regular second appeal has been directed by the defendant/appellant.

9. The appellants in paragraph No.9 of the grounds of appeal, have mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (i) Whether the Courts below were right in law in decreeing the suit in view of the bar contained in Section 60(b) of the Indian Easements Act, 1882
- (ii) Whether the plaintiff could revoke the licence in view of the fact that the defendants/appellant herein had executed work of permanent character and had incurred expenses in doing so ?

10. I have heard learned counsel for the appellant and have gone through the case file with her able assistance

10. The case of the plaintiff is that he is owner of the suit property and suit property has been given to the defendants being near relative as licensee and his licence has been revoked. Case of the defendants is that they are the owners of super-structure of the house constructed over the suit property and they had spent huge amount. However, there is concurrent finding of fact that plaintiff is the owner of the suit property and the defendants have failed to prove that they have raised any construction over

the suit property. So, in these circumstances, the trial Court has decreed the suit of the plaintiff. The defendants have filed appeal which has been dismissed. There is nothing on the file to show that findings of both the Courts below are the result of misreading and misinterpreting the evidence on the file. The defendants have taken the stand that licence granted by the plaintiff is irrevocable but has failed to prove that fact. There is nothing on the record that defendants had executed work of permanent character and had incurred expenses in doing so, as alleged. So, I have no hesitation in holding that no substantial question of law has arisen in the present appeal and consequently, the appeal is without any merit and the same stands dismissed.

11. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

August 17, 2015
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