

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA No.3278 of 2015 (O&M)

Gurjit Singh

.... Appellant

Versus

Mehar Singh

.... Respondent

2. RSA No.3331 of 2015 (O&M)

Gurjit Singh

..... Appellant

Versus

Mehar Singh and others

..... Respondents

Date of Decision: 22.07.2015

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. A.D.S. Jattana, Advocate,
for the appellant.

1. To be referred to the Reporters or not? **Yes.**
2. Whether the judgment should be reported in the Digest? **Yes.**

RAJIV NARAIN RAINA, J.

1. This order will dispose of RSA # 3278 of 2015 titled *Gurjit Singh vs. Mehar Singh* and RSA # 3331 of 2015 titled *Gurjit Singh vs. Mehar Singh and others*. The facts are taken from RSA # 3278 of 2015 as by and large common questions of law and fact are involved in both the appeals arising out of two suits, one filed by the father against the son and the other vice versa. Both the suits have been dismissed against which the losing party has approached this Court in second appeal against the appellate

decrees.

2. Plaintiff Mehar Singh is the father of defendant Gurjit Singh. The plaintiff has been living and working for gain in Dubai for the last 30 years. Mehar Singh owns property in India including the disputed house # 1663, Phase-5, SAS Nagar, Mohali. The plaintiff pleaded that his litigating son was separated from his wife and thereafter in July 2002 was permitted by him to reside temporarily as a licensee in one room with bathroom with use of back yard on the ground floor of the suit property. The defendant promised to vacate the premises soon after making his own arrangements. But he reneged on his promise and refused to vacate the premises. This led to the litigation with father asking son to quit.

3. The present suit for mandatory injunction was filed by the father after he decided to revoke the license of the defendant by a legal notice issued on March 15, 2004 asking him to vacate the premises and hand over its possession. After expiry of the period of notice, the license of the defendant stood terminated in law and in fact but still he failed to hand over the vacant possession of the disputed premises and the defendant son is, therefore, liable to be ejected from the suit property by a decree.

4. Upon notice, defendant appeared and filed his written statement. He denied that plaintiff was exclusive owner in possession of the suit premises. When he was 12 or 13 years old he was taken to Dubai in the year 1986. He studied there for 3 years and thereafter took to work as a carpenter to make a living. He used to earn money and make it over to his father. The defendant worked there till the year 2001 and claims that he gave lacs of rupees to this father and also sent some money from his savings to his

mother in India. The defendant asserted that the construction of the ground floor of the suit house was funded by him. The two upper storeys were also constructed and let out to tenants on rent. Defendant was married in September 2001. Defendant stated that soon after he was married his mother Surinder Kaur, sister and brother started harassing his wife for bringing insufficient dowry. This led to matrimonial discord and matters came to a head when the wife moved an application to the State Commission for Women, Chandigarh and in the Women Cell of the Police Department, Sector-17, Chandigarh complaining of harassment etc. A mutual settlement was arrived at in the parleys to restore peace. It was decided that a portion of the house should be allocated to the defendant for separate residence and the defendant should become owner of half share in all the properties as he had contributed an amount of Rs.25,00,000/- for the construction of the house in dispute. It was also decided in the Women Cell that the two upper storeys of the suit house would be given to the defendant after the tenants have vacated the rented premises. The alleged family settlement took place in the year 2002.

5. The ice was broken when the son filed Civil Suit # 103 on 17.2.2004 for declaration of joint ownership by inheritance and possession and for permanent injunction against his father Mehar Singh claiming decree that the suit property is ancestral and coparcenary property in nature in which the plaintiff has a birth right. This is the first limb of the litigation. Mehar Singh countered the suit by Civil Suit # 254 of 5.4.2004 titled *Mehar Singh vs. Gurjit Singh* after expiry of period of notice to quit. This is the second limb of the litigation.

6. In his suit Gurjit Singh asserted that previously the father of Bachan Singh [great grandfather] was owner of the family properties and after his demise it came into the hands of Bachan Singh and that is how the properties were inherited by his father defendant Mehar Singh. The suit house though had been purchased by the grandfather of the plaintiff and defendant # 2 – Kamaljit Singh, brother of the plaintiff, it was purchased out of the income of the joint family in which he had contributed substantially. The second and third floors of the suit house were constructed in the year 1994. There were other properties as well which are self-acquired properties of Bachan Singh. It was objected by the defendant father in defence of the suit that since both Bachan Singh and Mehar Singh are alive, therefore, the question of inheritance does not arise of either the plaintiff or his brother Kamaljit Singh.

7. The defendant Mehar Singh in the written statement in first suit pleaded that the plaintiff was a licensee in a portion of the ground floor but when the son started creating nuisance the father filed a separate suit to recover possession of the part in which Gurjit Singh was a licensee of his father. The suit was decreed and the defendant-Gurjit Singh was ordered to be evicted when held to be only a licensee of his father and in the event when license was revoked interest in property ceased to exist. On the other hand the suit filed by Gurjit Singh against his father was dismissed in both the courts below.

8. That is how both the appeals have come up for hearing today before me. The fate of suit filed by the son depends on the fate of the suit filed by the father. If the son is a licensee in a portion of the demised

premises then it would be difficult for the son to succeed in his suit claiming ownership rights over it and when he fails to establish ancestral rights to suit or any other property he would not be entitled to the decree prayed for by him.

9. The defendant-son argued that the suit of the father was not maintainable in its present form because in the suit mandatory injunction was claimed but not possession. If possession was not claimed in the suit, mandatory injunction could not issue independently. But when he objected on this point he missed the obvious. Mehar Singh was the recorded owner of suit property in municipal record and held exclusive title over it. He was neither interested nor could be held able by court to seek further relief other than a mandatory injunction to compel defendant to vacate his property when the son was a mere licensee and held over the suit property against the will of the owner. In this, both sections 34 and 39 of the Specific Relief Act, 1963 are read against the son Gurjit Singh and in favour of the plaintiff.

10. The court of first appeal relied on a decision of the Delhi High Court in **Hori Lal vs. Sarwan Kumar**, 1992 (46) DLT 173 wherein the Court held that when property is in possession of a licensee, a suit for mandatory injunction is maintainable after revocation of the license by notice issued and duly served on the defendant. The legal notice dated March 15, 2004 was duly exhibited on record as Ex.P-2. The question whether service of notice was effected receded into the woodwork when defendant Gurjit Singh replied to the notice vide letter Ex.P-3 which was itself proof of service of notice. As against the issue of the status of a licensee, the defendant was unable to produce any documentary evidence to

rebut the assertion that it was self acquired and prove that he had a right to the property as a non-licensee or by inheritance. If he spent substantial personal money on the construction or part of it there was no evidence of it adduced on record. Therefore, nothing could be said either way on the point. Nor would it have made any substantial difference as to the status of the property. Indisputably, the demised house stands in the name of Mehar Singh as owner which fact was not denied in the written statement of the defendant son.

11. The rights and liabilities of a licensee are statutorily enacted in the Indian Easements Act, 1882 (for short "the Act"). A license is defined in section 52 of the Act which provision reads:-

52. "License" defined.- Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

12. The way to revoke a license, by express or implied words, is statutorily prescribed by section 61 of the Act. Illustration (a) of section 61 is express while illustration (b) is implied revocation. The provision is of salutary importance to the cases in hand and reads:-

"61. Revocation express or implied.- The revocation of a license may be express or implied.

Illustrations

(a) A, the owner of a field, grants a license to B, to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked.

(b) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked."

13. The rights of a licensee on revocation and on eviction are codified in sections 63 and 64 of the Act. The provisions read as under:

*" 63. **Licensee's rights on revocation:** Where a licence is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property. "*

*"64. **Licensee's rights on eviction:** Where a licence has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the licence, the right for which he contracted, he is entitled to recover compensation from the grantors. "*

14. These rights present a grim scenario for the licensee. That only right which licensee can invoke on revocation is reasonable time to quit as per section 63 of the Indian Easements Act. Where licensee is not granted for consideration, as in the present case, and that too without any fault of licensee, he cannot even reap the limited compensation benefits conferred by section 64 of the said Act. Nor was the period of enjoyment of licensee rights stipulated by Mehar Singh, when he admitted his son to live in a part of his premises as a temporary measure to help his son tide over his matrimonial crisis, for the time being, and without any written assurances for the future.

15. If the defendant claimed coparcenary rights which were upon him to prove by leading evidence in his suit when the father asserted that he was a licensee in the demised premises then he failed miserably to establish any birth right in the suit property under Hindu law or prove the ancestral nature of the suit property. The three issues framed in the suit filed by Mehar Singh were:-

"1. Whether the plaintiff is entitled to Mandatory Injunction as

prayed for? OPP.

2. Whether the suit is not maintainable in the present form?

OPD.

3. Relief."

16. The defendant did not claim an issue on demised premises being Joint Hindu Family Coparcenary Property. The principal issue was whether the plaintiff is entitled to mandatory injunction as prayed for. In the oral evidence adduced by the defendant son, he alone stepped into the witness box as witness DW-1 to make an oral deposition to support his version in the plaint and closed his evidence without producing any documentary evidence which infers that he had nothing concrete to say on the question of ownership being partly his, as claimed by him on the strength of contributing money in raising construction on the plot where the suit house stands. Therefore, the present is a case of no evidence to support the version of the defendant Gurjit Singh and the courts below were correct in reasoning that the suit deserves to be dismissed.

17. With the success of the suit filed by the father where the courts have held the defendant to be a licensee of his father, then the second suit by the very nature of things has to fail for lack of evidence to support a claim based on ancestral nature of the property.

18. For the foregoing reasons, both the appeals are found to have no life and are, therefore, ordered to stand dismissed. Besides, no substantial questions of law arise for consideration in either of the appeals.

**(RAJIV NARAIN RAINA)
JUDGE**

22.07.2015