

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1988 of 2014 (O&M)
Date of Decision: July 07, 2015

Smt.Ram Rati and others

...Appellants

Versus

Braham Parkash

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashish Yadav, Advocate
for the appellants.

Mr.P.R.Yadav, Advocate
for the caveator-respondent.

INDERJIT SINGH, J.

CM No.4827-C of 2014

For the reasons mentioned in the application, the same is allowed. The delay of 45 days in re-filing the appeal is condoned.

RSA No.1988 of 2014

Appellants-plaintiffs Smt.Ramrati, Vijay Kumar, Rajender and Prem Chand have filed this regular second appeal against respondent-defendant Braham Parkash, challenging the impugned judgment and decree dated 26.10.2012 passed by learned Civil Judge (Junior Division) Gurgaon, vide which the suit filed by the plaintiffs-appellants for mandatory injunction was dismissed and also the judgment and decree dated 05.09.2013 passed by learned District

Judge, Gurgaon, vide which the appeal filed by the appellants was dismissed.

The brief facts of the case are that plaintiffs-appellants Smt.Ramrati, Vijay Kumar, Rajender and Prem Chand have filed the suit against defendant-respondent Braham Parkash for mandatory injunction, stating therein that husband of plaintiff No.1 and father of plaintiffs No.2 to 4 namely Ganpat Ram was allotted a plot measuring 100 yards and was also put in possession of the same by Haryana Government vide vasika dated 26.04.1970 situated in village Nathupur and Ganpat Rai became the owner in possession of the said plot. He constructed three storeyed house on the afore-said plot and has spent ₹3 lacs on the construction of the same, which was completed in the month of May, 1998. It is further stated that the defendant is real brother of Ganpat Ram and in the month of September 1998, the house in question was given to the defendant on his request as a licensee without any rent. Ganpat Ram died on 20.04.2005 and the plaintiffs required the aforesaid house and terminated the licence in the last week of September 2008. It is also stated that defendant is not vacating the house and is in unauthorized possession of the same.

Upon notice, defendant filed written statement and took the plea that during lifetime of Ganpat Ram, the defendant relinquished his right in the house situated within the lal lakir (red line) of village Nathupur and also relinquished his right in another pucca house situated in the lal lakir and in lieu of that Ganpat Ram

relinquished his right in plot measuring 100 sq. yards situated within the revenue estate of village Nathupur. It is further stated that the defendant raised construction on the said plot in 1998 and also obtained electricity connection. The defendant is also paying the Chuhla Tax in the Gram Panchayat. The defendant further raised construction and since that time, he is residing in the house in question and after the death of Ganpat Ram and during his lifetime, the plaintiffs were residing in the house of the share of the defendant.

Issues were framed. Both the parties led evidence. Learned Civil Judge (Junior Division), Gurgaon, after discussing the oral evidence on record as well the documents produced by the defendant i.e. bills for building material Ex.D1 to D8 and Ex.D13 to Ex.D26, ration card, electricity bill, Chuhla Tax receipt and voter card, held that the plaintiffs failed to prove their case that defendant is licensee in the house. The Court further held that the case of the plaintiffs is not supported and corroborated by any cogent evidence. Aggrieved from the judgment and decree passed by learned Civil Judge, appellants-plaintiffs filed appeal before learned District Judge, Gurgaon, who also upheld the findings given by learned Civil Judge and dismissed the appeal vide judgment and decree dated 05.09.2013.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellants-plaintiffs.

Notice of motion was issued and learned counsel for the

caveator-respondent appeared and contested the appeal.

At the time of arguments, learned counsel for the appellants argued that the defendant has admitted the ownership of the plaintiffs and there is sufficient evidence to prove that the house in question was given on licence to the defendant. He further argued that there is no cogent evidence on the record to prove the family settlement. There is no mention of houses of which share was given to Ganpat Ram, predecessor of the plaintiffs. Therefore, he argued that the findings of the Courts below are not as per evidence.

On the other hand, learned counsel for the respondent argued that no substantial question of law arises in this case and both the Courts below have correctly given the findings and the passed the judgments and decrees.

After hearing learned counsel for the parties and after going through the record, I find that plaintiffs are alleging that Ganpat Ram has constructed the house in the year 1998 and it was given to his brother as a licensee. The plaintiffs are to prove their case by leading cogent evidence. There is no documentary evidence on record to support this version of the plaintiffs that the defendant inducted into the premises as licensee. There is also no cogent evidence on record to prove that this house was constructed by Ganpat Ram and not by the defendant-respondent. On the other hand, the version of the defendant that he entered into this property on the basis of family settlement and has constructed the house, has been supported and corroborated by the documentary evidence

placed on record i.e. bills of building material, electricity bill, receipt of Chuhla Tax, voter card etc. The defendant has also got examined the mason who constructed the house. The defendant also examined his and Ganpat Ram's sister in the evidence, who also deposed regarding the relinquishment of the share of other house situated in the red line and deposed regarding the family settlement.

Keeping in view the evidence on record, I find that the evidence produced by the plaintiffs regarding inducting the defendant into the premises as licensee, has been duly rebutted by the evidence produced by the respondent-defendant. Otherwise also, it looks unnatural that when the house is constructed by Ganpat Ram, then why the electricity connection is not in his name. As per the pleadings, the house was constructed in the month of May, 1998 and defendant came into possession in September 1998. If it is so, then the electric connection would have been in the name of Ganpat Ram. Furthermore, I find that for the last 10 years, defendant remained in possession as a licensee without paying any rent to Ganpat Ram or plaintiffs.

The appellants-plaintiffs have also filed an application under Order 41 Rule 27 CPC for placing on record affidavits as additional evidence in the appeal as these are necessary documents. The perusal of this application shows that appellants wanted to produce duly attested affidavits of Mirchi Ram, Numbardar, Dayawati Ex.Sarpanch and Lilu Ex.Sarpanch. This evidence was in the knowledge of the appellants when they produced other evidence.

Now, in the regular second appeal, this evidence cannot be allowed as it will amount to re-opening of the case and amounts to filling up of lacuna. This evidence could have been produced before the trial Court with due diligence. No such evidence has been produced. If this additional evidence is allowed, it will cause serious prejudice to the respondent. Therefore, I do not find any merit in the application under Order 41 Rule 27 CPC.

In view of the above, I find that the findings of the Courts below are concurrent, as per evidence and do not require any interference from this Court and the same are upheld. No substantial question of law arises in the present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

July 07, 2015
Vgulati

(INDERJIT SINGH)
JUDGE