

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

**RSA No.475 of 2015 (O & M)
Date of Decision:12.02.2015**

Gurbachan Singh and another

....appellants

Versus

Kuldip Singh

.....respondent

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.M.S.Bajwa, Advocate
for the appellants

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiffs was decreed by the trial Court vide judgement and decree dated 15.11.2013. Appeal preferred against the said decree failed and was dismissed on 30.09.2014. This is how, defendants are before this Court, in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, plaintiff prayed for a decree for mandatory injunction directing the defendants to vacate the portion consisting of one room, kitchen, bathroom and toilet, on the first floor of the house bearing municipal property No.296/W-3, situated at Banian Mohalla,

Kartarpur, Tehsil and District Jalandhar, shown in red colour in the plan appended with the plaint. It was averred that plaintiff happened to be the owner in possession of the house in question as he had purchased the site vide a registered sale deed No.2535 dated 28.08.1963, and constructed a house thereon. Defendant No.1, happened to be the son of the plaintiff and defendant No.2 was his daughter-in-law. Defendants were permitted by the plaintiff to use one room, kitchen, bathroom, toilet on first floor of the house and their possession was of a licensee. As conduct of the defendants towards plaintiff, his wife and other family members was extremely offensive, quarrelsome and disrespectful, plaintiff terminated the license, orally, as well as vide registered notice dated 31.01.2011. It was maintained that plaintiff had been so offended and distressed by the defendants that he not only dis-associated himself from them, vide a public notice in the daily Punjabi newspaper i.e.Rozana Ajit dated 23.07.2010, but also, disinherited defendant No.1 from his estate. As despite service of notice qua termination of license, defendants refused to vacate the portion of property in dispute, thus the suit.

In defence, it was pleaded, inter alia, that defendants were in occupation of a portion of the house, being son and daughter-in-law of the plaintiff and not as a licensee. In fact, defendant No.1 married defendant No.2 in the year 1991 and, thereafter, both of them started residing at the ground floor of the suit property. Subsequently, as desired by the parents of defendant No.1, he constructed a portion for himself on the first floor of the house in

question and started living therein with his family. He moved to Dubai for employment in the year 2002 and comes to India only once in a year. It was denied that the defendants were ever served with any notice.

On a consideration of the matter in issue and the evidence on record, the courts below found that the sale deed No.2535 dated 28.08.1963 (Ex.P2) proved the ownership of the plaintiff qua the house in question. In fact, the said sale deed was never denied by the defendants in their written statement. Thus, the ownership of the plaintiff qua the suit property was conceded by the defendants. As the suit property was a self acquired property of the plaintiff, defendant No.1 had no right, title or interest therein. Further, defendant never claimed the suit property to be ancestral. Nothing was brought on record to prove that, actually, defendant No.1 had constructed a portion on the first floor that was in his occupation. That being so, possession of the defendants was permissive and at the pleasure of the plaintiff. Legal notice dated 31.01.2011 (Ex.P3), vide which the license was purportedly terminated, was duly served upon the defendants. The acknowledgement (Ex.P6) that was brought on record proved that the notices were duly received by defendant No.2 i.e. wife of defendant No.1. In fact, defendant No.2, in her cross-examination testified the service of the legal notice dated 31.01.2011 (Ex.P3). She also conceded that she had signed the acknowledgement dated 03.02.2011 (Ex.P6). As defendant No.2, was pursuing a suit on behalf of defendant No.1, as well , hence, it was concluded that service of notice dated 31.01.2011 was duly

effected upon the defendants. In any case, it was observed that license could be revoked by licensor either expressly or impliedly. Resultantly, the suit was decreed. Appeal preferred by the defendants against the said decree failed, and, was accordingly dismissed.

I have heard learned counsel for the appellants and perused the RSA paper book.

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Ex facie, plaintiff happened to be the exclusive and absolute owner of the suit property pursuant to a sale deed No.2535 dated 28.08.1963. Execution of the sale deed (Ex.P2), in favour of the plaintiff was conceded by the defendants. Nothing was brought on record by the defendants to prove that they had any right, title or interest in the house in question. The plea that a portion in occupation of defendants No.1 and 2, was constructed by the defendants, remained un-substantiated on record. No evidence was brought on record in this regard. Defendant No.1 never claimed that the suit property was coparcenary in nature and thus, he had a right therein by birth. That being so, the house in question was the self

acquired property of the plaintiff. Defendant No.1 was a major son of the plaintiff and thus, could not claim any right in the self acquired property of his father. It was proved on record that the possession of the defendants over a portion of the suit property was merely of a licensee and permissive in nature. Vide notice dated 31.01.2011 (Ex.P3), that was duly served upon defendant No.2, the license was revoked. Evidence on record prove the service of the said notice upon defendant No.2, which, she duly acknowledged while appearing in the witness box. It appears that the conduct of the defendants towards the plaintiff, his wife and other family members was indeed offensive and disrespectful and, that is what led to the filing of the present suit by father against his son. Records show that plaintiff was offended and distressed to the extent that he dis-associated himself from the defendants and dis-inherited defendant No.1 from his estate, by publication in newspaper in Rojana Ajit dated 23.07.2010. That being so, ex facie, all what the plaintiff prayed for was a peace in the evening of his life.

Learned counsel for the appellants could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law to interfere with the decree being assailed in the present appeal. No question of law, much less

any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

12.02.2015

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(ARUN PALLI)
JUDGE