

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2314 of 2014 (O&M)

Date of Decision.08.09.2015

Rakhi and others

.....Appellants

Versus

Avtar Kaur and others

.....Respondents

Present: Mr. Malhar Singh Dhami, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers 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?

-. -

K. KANNAN J. (ORAL)

1. The plaintiff, who filed the suit for mandatory injunction for ejectment of the widow, daughter-in-law and grand children, secured the decree but in the appeal filed by the defendants, the decision of the trial Court was reversed and the plaintiff's suit was dismissed. The plaintiff's contention was that the property in the possession of the defendants was handed over on licence to the defendants and the licence to continue about 11 to 12 years back prior to the institution of the suit in the year 2008 and the licence had been revoked and the plaintiff is entitled to possession of the property. The contention in defence by the widow/daughter-in-law was that the vacant land of the property was described in the revenue records as *shamlat patti* that belonged to the proprietors and the father had actually allowed the son to be in possession of property in a family arrangement between the father and the son and he had put up a construction. They were living

in the house but the son who was working in Railways died a premature death in 2003. After the death of the son and when the defendants were still in possession of the property, the suit has been filed in the year 2008 by the plaintiff as though he is the owner of the property. The contention is that the construction put upon the vacant land never belonged to the plaintiff by any point of time and defendants alone were in possession of the property in their own right.

2. The trial court found that the vacant land had been entered in the name of the plaintiff, his brothers and other proprietors and found that the plea of oral settlement as made by the defendants had not been established. In the Appellate Court, it found that if the property had been handed over to the son and a construction had also been put up by the son and repairs had been made by the daughter-in-law as a mason had spoken, it cannot be contended that it was merely a case of licence. It must be taken that they were also proprietors in respect of the same property and the suit for mandatory injunction was not competent. It reversed the decision and allowed the appeal.

3. Learned counsel appearing on behalf of the appellant states that there was no proof of family arrangement and a claim to proprietorship was inconsistent with the plea that there had been a family arrangement made and the property was handed over by such a family arrangement. The counsel would read to me judgment of the trial Court that took a finding against the plea of family arrangement. I have no difficulty in seeing that a plea of the defendants being proprietors along with other proprietors in the village for the land which is described as *shamlat patti* was not brought out in the pleading

anywhere. Even without such a reference, I would hold that the plea of family arrangement will be seen in a context of how property has been put to use. If the plaintiff would contend that the property was handed over about 11 to 12 years back when the suit was filed in the year 2008 when the son was still alive and a construction had been put up there on the property, I would take it as a construction permitted to be made by the father to his son and if the defendants continued to reside in such property and by his acquiescence, he has allowed for a construction to come up on the property which was an improvement, the plaintiff cannot resile from such an arrangement handing over vacant land and allowing for a construction to be made. I will not find such an entry into possession to be adverse in any sense but if improvement upon property has been brought about by the son and the family continued to reside there, there is no manner by which the plaintiff will be entitled to resile from such an arrangement and seek for recovery of possession by means of mandatory injunction. The plaintiff would be estopped by his conduct and I will apply a different principle to non-suit the plaintiff. The dismissal of the suit as done by the Appellate Court was justified under the circumstances although for different legal reasons which I have enumerated above.

4. I find no substantial question of law for consideration in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

September 08, 2015
Pankaj*