

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3794 of 2014
Date of decision: 05.10.2015

Baldalip Wala Thind

... Appellant

Versus

Hardeep Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Amardeep Singh Gill, Advocate
for the appellant.

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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 28.02.2013. As even the appeal preferred against the said decree failed and was dismissed vide judgment dated 10.03.2014, the plaintiff is before this court in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

Plaintiff prayed for a decree for mandatory injunction, directing the defendant to hand over the possession of house No.31, constructed over a land measuring 5½ marlas. And of a vacant plot measuring 7 marlas adjacent to the said house. It was maintained that defendant i.e.

Hardeep Kaur was the step-mother of the plaintiff. But as the suit property was later transferred by his father in his name, vide sale deed dated 23.05.2007, he became the owner thereof. And, thus, plaintiff simply allowed the defendant to live in the said house as also the adjacent plot as licensee. However, his father had divorced the defendant. And thus, the defendant had no relation either with the plaintiff or his father. Though, plaintiff revoked the licence vide notice dated 19.08.2011, which was served upon the defendant, but as she still failed to vacate the suit property, therefore, the suit.

In defence, it was pleaded, inter alia, that the defendant was married to Balbir Singh Thind i.e. the father of the plaintiff, who moved to Canada and obtained an ex parte decree of divorce dated 26.05.2008 from the Supreme Court of British Columbia against the defendant. Defendant was in possession of the house in question in her own right. The sale deed, vide which the suit property was purported to have been transferred in favour of the plaintiff, was alleged to be a sham transaction, being without consideration. Plaintiff never issued any licence in favour of the defendant and, thus, there was no occasion for its revocation.

On a due and comprehensive consideration of the matter in issue, and the evidence on record, both the courts concurrently concluded that plaintiff himself never appeared to depose in support of his claim. He examined his attorney

Mohan Singh (PW1), who reiterated the case set out in the plaint, but his cross-examination revealed that the suit was not instituted through him but by another attorney, namely, Harbhajan Singh. He conceded in his cross-examination that he did not know as to when the present suit was filed. He also did not know anything as regards the marriage of Hardeep Kaur with Balbir Singh Thind. He pleaded ignorance as regards the institution of divorce petition by Balbir Singh Thind. Likewise, he did not know that defendant-Hardeep Kaur had filed a suit challenging the ex parte decree of divorce obtained by Balbir Singh Thind in civil courts at Jalandhar. However, he admitted that defendant-Hardeep Kaur was married to Balbir Singh Thind and this is how, she occupied the suit property as wife of Balbir Singh Thind. And since then, she was continuing to be in occupation thereof. Apparently, attorney of the plaintiff had failed to establish that he had any personal knowledge of the facts of the present case. Therefore, non-appearance of the plaintiff was fatal to his claim. Even otherwise, nothing was brought on record, least any cogent or credible evidence, to show as to when the plaintiff had granted licence to the defendant to occupy the suit property. Concededly, no date, month or a year, when the alleged licence was granted to the defendant was mentioned in the plaint. Defendant had filed a review petition against the ex parte decree of divorce obtained by Balbir Singh Thind and,

therefore, the proceedings of divorce had not yet attained finality. There was yet another issue; whether a decree of divorce passed by the Supreme Court of British Columbia was even executable in India particularly when it was obtained ex parte and not in terms of the provisions of Section 13 of the Hindu Marriage Act, 1955. That being so, it was concluded that defendant being the married wife of Balbir Singh Thind was entitled to remain in possession of the house that belonged to Balbir Singh Thind. As regards the claim of the plaintiff that he had acquired the title over the suit property, only a sale deed was tendered in evidence. The requisite evidence to prove the due and valid execution thereof was never led. Resultantly, plaintiff even failed to prove his title as well. Nothing was/is brought on record to show that the defendant ever attorned as a licensee to the plaintiff. No evidence was led to prove that the defendant was in possession pursuant to a licence granted by the plaintiff, oral or otherwise. Learned counsel for the appellant could not show that if defendant entered possession of the suit property as a legally wedded wife of Balbir Singh Thind on 02.05.2004 then on subsequent transfer of the suit property by Balbir Singh Thind in favour of the plaintiff on 23.05.2007, her possession would automatically transform into that of a licensee. Nothing could be shown as to how the conclusions that had concurrently been recorded by both the courts below

were either contrary to the position on record or suffered from any material illegality. No other argument was advanced.

In the wake of the position as set above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is accordingly dismissed.

October 5, 2015
Rajan

(Arun Palli)
Judge