

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

Date of Decision: 18.03.2015

RSA No.4605 of 2014 (O&M)

Om Parkash

Versus

... Appellant

Usha Rani & ors.

... Respondents

RSA No.4606 of 2014 (O&M)

Om Parkash

Versus

... Appellant

Usha Rani & ors.

... Respondents

RSA No.4607 of 2014 (O&M)

Om Parkash

Versus

... Appellant

Usha Rani & ors.

... Respondents

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

Present: Mr. Mandeep K. Saajan, Advocate,
for the appellant.

Ms. Ekta Thakur, Advocate,
for the respondents.

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

RAJIV NARAIN RAINA, J.(Oral)

This order disposes of RSA Nos.4605, 4606 and 4607 of 2014.

The facts are taken from RSA No.4605 of 2015.

Though, a brother of the plaintiff, the defendant appellant was a licensee in the suit property. He was given shelter for the time being by his brother/s and sister/s, the respondents. Respondents asked their brother, the appellant, to vacate the premises. The brother refused. His licence was

terminated by the plaintiff whereafter his possession became unauthorized, unlawful as would a trespasser's be. The conflict led to litigation in a suit instituted for mandatory injunction by the siblings. The respondents suit succeeded and the appellant was ordered to be evicted from the licensed portion of the suit premises by the trial court. The first appeal failed. In this second appeal, it is urged that the suit for mandatory injunction was not maintainable against a trespasser or a licensee. Besides, there had been entered once a compromise between the siblings which allowed six months' time to the appellant to vacate the premises but the premises were not vacated, which compelled the plaintiffs-respondent to serve a quit notice upon the appellant. When the appellant did not willfully vacate the premises, the suit was brought in the year 2003. It is thus urged that once six months' time was given to vacate the corpus property and he continued in possession, then the appellant had a right to continue until he was evicted in accordance with law in a suit for permanent injunction and possession. By advancing this argument, the appellant appears to be asserting rights as a tenant or owner in possession, which is legally impermissible, but he did so in the suits subject matter of the accompanying appeals. This argument is clearly a misreading of Section 61 of the Indian Easements Act, 1882 and the illustrations A & B given thereunder with respect to the rights of a licensee. The question, which remains to be considered and which has been argued before this Court is with respect to award of mesne profits for illegal use and occupation of the part of the premises, that such a direction was improper. The plaintiffs had claimed mesne profits for use and occupation of the property after notice to quit was served quantifying the same @

Rs.6,000/- per month. The court below in its wisdom and sound exercise of discretion has reduced the claim of the plaintiffs from Rs.6000/- to Rs.3,000/- by reversing the judgment of the trial Court on the point of mesne profits as being just and fair compensation. Just as costs follow the event, mesne profits also follow use and occupation of property as licensee or a tenant as the case may be and the only barrier to mesne profits is waiver by the plaintiff of his rights to mesne profits, which is not the case. If that right is not waived, the Court is divested of discretion to deny mesne profits but can exercise judicial discretion only to the extent of awarding what appears to it just, reasonable and adequate compensation for use and occupation of a property upon eviction. The right flows from loss occasioned by delay in execution of the decree and continued illegal possession. Besides, the Court is informed that the decree has been duly executed and possession has been recovered by the respondents from the appellant and to that extent the appeal has been rendered infructuous. The proceedings have been rendered infructuous also because no legal principle appears to come in aid of the appellant which might preserve his right to continue to occupy property as a licensee against the will of the licensor. No question of law, much less a substantial one, arises in this appeal and for the foregoing reasons, I find no merit therein and the same is, therefore, dismissed and the file sent to the record room.

In view of the failure of this appeal, the connected appeals filed by the appellant also fail since in those, a right was claimed over the property as owner in a suit for declaration brought by the appellant against the respondents, which right asserted is not based on title nor could such a

right be established on evidence. Assertion of those rights by the appellant has been rightly repelled by the courts below and no interference is called for in the concurrent findings of fact recorded by the courts *a quo*. The foundation of the cases filed by the appellant against the respondents rested on a flimsy house of cards which have fallen and remain incapable of reconstruction.

18.3.2015
monika

(RAJIV NARAIN RAINA)
JUDGE