

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.133 of 2015**

Smt.Anwari Begum, aged about 60 years, wife of Shri Saleem Khan, Daughter of Shri Nizamuddin Qureshi, resident of Isayeepara, Tumgaon Road, Near Railway Crossing, Mahasamund, Tahsil and District-Mahasamund (CG)

---- Appellant

Versus

Sirazuddin Qureshi, aged about 70 years, (As per plaint, has not been mentioned), Son of Nizamuddin Qureshi, resident of behind Sharma Daily Needs Dawda Colony, Near Pachpedi Naka, Raipur, Tahsil and District Raipur (CG)

---- Respondent

For Appellant	: Mr.A.N.Bhakta, Advocate
For Respondent	: Mr.B.P.Sharma, Advovate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****21/09/2016**

1. The plaintiff filed a suit for mandatory and permanent injunction against the defendant/her own sister.
2. The trial Court by its judgment and decree dated 28.10.2014 held that the suit house is owned by the plaintiff constructed from his own earning, the suit filed is within limitation and the plaintiff is entitled for possession holding the defendant to be licensee.
3. Against which, the defendant preferred the first appeal before the First Appellate Court, which was dismissed by the First Appellate Court vide judgment and decree impugned.

4. Being dissatisfied with the aforesaid judgment and decree, the present second appeal under Section 100 of the CPC has been filed by the appellant.

5. Mr.A.N.Bhakta, learned counsel appearing for the appellant, would submit that concurrent finding recorded by two Courts below are perverse, proper court fee has not been paid by the plaintiff and issue with regard to licensee has not been framed by the trial Court, which give rise to substantial question of law for decision of this second appeal.

6. On the other hand, Mr.B.P.Sharma, learned counsel appearing for the respondent would support the judgment and decree impugned and oppose the second appeal.

7. I have heard learned counsel appearing for the parties, perused the judgment and decree impugned and records of the Courts below with utmost circumspection.

8. It is true that the plaintiff has brought a suit for mandatory and permanent injunction. No relief of possession has been asked for.

9. Very recently, the Supreme Court in the matter of **Gowri vs. Shanthi and another**¹, has held that suit for mandatory injunction for eviction of licensee in permissive possession, upon revocation by owner, is permissible.

10. Both the Courts below have concurrently held that the plaintiff is owner of the suit accommodation and defendant is licensee and in view of the judgment of the Supreme Court in the matter of **Gowri** (supra), the trial Court has rightly granted decree for mandatory injunction directing eviction of the defendant as the

¹ (2014) 11 SCC 664

defendant is licensee in permissive possession.

11. The Supreme Court in the case of **Vishwanath Agrawal, S/o Sitaram Agrawal Vs. Sarla Vishwanath Agrawal**², has held that High Court should not disturb the concurrent finding of fact, unless finding recorded is perverse being based on no evidence. Para-36 & 37 of report states as under:-

“36. In **Major Singh Vs. Rattan Singh**³ it has been observed that when the Courts below had rejected and disbelieved the evidence on unacceptable grounds, it is the duty of the High Court to consider whether the reasons given by the Courts below are sustainable in law while hearing an appeal under Section 100 of the Code of Civil Procedure.

37. In **Vidhyadhan Vs. Manikrao**⁴ it has been ruled that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the Courts below are perverse being based on no evidence or that on the evidence on record no reasonable person could have come to that conclusion. We may note here that solely because another view is possible on the basis of the evidence, the High Court would not be entitled to exercise the jurisdictions under Section 100 of the Code of Civil Procedure. This view of ours has been fortified by the decisions of this Court in **Abdul Raheem V. Karnataka Electricity Board**⁵.

2 (2012) 7 SCC 288

3 (1997) 3 SCC 546: AIR 1997 SC 1906

4 (1999) 3 SCC 573

5 (2007) 14 SCC 138: AIR 2008 SC 956

12. Keeping in view, the ratio of law laid down by the Supreme Court in the aforesaid cases, the concurrent finding of fact recorded by both the Courts below is based on evidence available on record and it is neither perverse nor contrary to the record, no substantial question of law is involved in this appeal.

13. Accordingly, the appeal deserves to be and is accordingly dismissed. However, at the request of learned counsel for the appellant, one year time is granted to the appellant to vacate the suit accommodation. The appellant will submit an undertaking before the trial Court within one month from today that she will vacate the suit accommodation on or before 1st November, 2017, failing which the decree shall be executable forthwith. No order as to cost(s).

Sd/-
(Sanjay K Agrawal)
Judge

B/-