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

**RSA-3887-2010 (O&M)  
Date of decision : 06.12.2016**

Pishori Lal and others

... Appellants

Versus

Jagdish Chand and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Premjit Kalia, Advocate  
for the appellants.

Mr. Rajender Sharma, Advocate  
for respondent Nos.1 to 4.

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**AMIT RAWAL, J. (ORAL)**

The appellant(s)-plaintiff(s) are aggrieved of the concurrent findings of fact, whereby the suit claiming relief of mandatory injunction directing the respondent(s)-defendant(s) to hand over the vacant possession of the property described therein, has been dismissed by both the Courts below.

Mr. Premjit Kalia, learned counsel appearing on behalf of the appellant(s)-plaintiff(s) submits that Budhu Ram @ Budhu Mal was the owner of the property on the basis of the registered sale deeds dated 09.10.1945 & 24.09.1945. After death, the appellant(s)-plaintiff(s) being legal heirs-daughters inherited the property thereof. Defendant No.2, who was the sister of the father of the plaintiff(s) was allowed to use and occupy the premises along with her son i.e. defendant No.1 in the capacity of licensees. The

license continued after the demise of Budhu Ram as permission was implied. The defendant(s) set up a plea of adverse possession. Taking of such plea tantamounts to admitting the ownership. No doubt the plea of *res judicata* was also taken in view of the judgment and decree rendered in Civil Suit No.8 of 1974 decided on 31.07.1978, but that judgment would not be binding on the premise that the appellant(s) was not the party. Both the Courts below have committed illegality and perversity in dismissing the suit, in fact, the defendant(s) had denied the appellant(s) being the daughter of Budhu Ram and in this regard, examined five witnesses, thus, there is a compliance of the provisions of Section 50 of the Indian Evidence Act, thus, the judgments and decrees are not sustainable and liable to be set aside.

Mr. Rajender Sharma, learned counsel appearing on behalf of respondent Nos.1 to 4/defendants submits that the respondent(s) have already been given title as per the judgment and decree and in the absence of challenge of the same, the suit was not maintainable. In fact, the plaintiff was liable to establish the title. The license was not transferable and no evidence has been led with regard to the transfer. Once, the defendant(s) have already been held to be owners, the question of transferring or continuing of the license either impliedly or with consent does not rise at all. The concurrent findings of fact cannot be interfered until and unless there is gross illegality and perversity, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the appellant(s)-plaintiff(s) have miserably failed to lead any evidence qua title of the property. Even if the plea of adverse possession had been taken as in the facts and circumstances,

noticed above, the respondent(s)-defendant(s) have already been given the title by virtue of the judgment and decree and held to be owners by way of adverse possession. The remedy for the appellant(s)-plaintiff(s) was not to seek the breach of obligation as per the provisions of Section 39 of the Specific Relief Act, but to claim independent right qua her ownership and challenge the decree. In the absence of the same, I am of the view that the simpliciter suit for mandatory injunction was not maintainable as no evidence has been led that the respondent(s)-defendant(s) had treated the appellant(s)-plaintiff(s) to be a licensor. Mere assertion in the plaint would not cloth the status of the licensee particularly when there is a judgment and decree, noticed above, in their favour and rightly so, the Courts below dismissed the suit.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same are based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. The second appeal is dismissed.

06.12.2016  
Yogesh Sharma

( AMIT RAWAL )  
JUDGE

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Whether speaking/reasoned      Yes/ No

✓

Whether Reportable      Yes/ No