

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CM No.12210-C of 2016 in/and
RSA No.1270 of 2016 (O&M)
Date of decision: 19.9.2016

Jai Raj and another

... Appellants

versus

Shyam Lal

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Namit Khurana, Advocate,
for the appellants
...

AMOL RATTAN SINGH, J. (Oral)

CM No.12210-C of 2016

1. By this application, the date of hearing in this appeal is sought to be advanced, on the ground that warrants of possession have been issued, in execution proceedings.

2. Since notice was still to be issued in the appeal itself, the application is accepted and the appeal is taken up for hearing today itself.

RSA No.1270 of 2016 (O&M)

1. In this appeal, the defendants, who are the son and daughter-in-law of the respondent-plaintiff, seek reversal of the judgments and decrees of the learned Civil Judge (Junior Division), Yamunanagar at Jagadhri, and the learned Additional District Judge, Yamunanagar at Jagadhri, by which the suit of the plaintiff was decreed in his favour and the appeal filed against the judgment and decree was dismissed.

2. Very briefly, the respondent-plaintiffs' suit sought a decree of mandatory injunction directing the appellants-defendants to vacate and hand over actual physical possession of one room on the first floor, including a

common courtyard, staircase, latrine and bathroom, in a double storeyed residential house owned by the plaintiff, fully described in the plaint filed.

The plaintiff had stated that he was residing on the ground floor of the said house and that his son and daughter-in-law, i.e. the defendants, were quarrelsome and were disrespectful towards him, though he was 75 years of age. It was further stated that due to the misbehaviour of the defendants, he had asked them many times to vacate the portion occupied by them, which according to the plaintiff, they were occupying as licensees and that he had eventually served a notice for such vacation on 16.5.2013 by registered AD post, also asking them to pay mesne profit to him after expiry of the notice period, @ Rs.100/- per month.

3. Upon notice issued to them, the defendants had filed a joint written statement denying the contents of the plaint and stating that the suit property was actually ancestral, owned by the wives' sister of Shri Chhota Lal, grand father of the first defendant and maternal aunt of the plaintiff. It was further contended that she had adopted the first defendant (wrongly typed as plaintiff No.1 in the judgment of the learned Civil Judge) and as such he had been living in the house as its owner.

It was still further pleaded that the first defendant had reconstructed the ground floor of the said house many times with his own funds and that the first floor was newly constructed by him. As such he and his wife were living there as owners of the house and not as licensees and actually the plaintiff had no concern with the property.

It was further contended that defendant No.2 was living in the house since her marriage and as such, it was her matrimonial home in which

she had given birth to their four children, of whom two had been married off.

4. Upon the pleadings of the parties, the following two issues were framed:-

“1. Whether the plaintiff is entitled for the relief of mandatory injunction as prayed for?OPP

2. Whether the suit is not maintainable?OPD”

5. The plaintiff examined his wife as PW2 and himself as PW1. He also relied upon various documents, including a legal notice and a postal receipt, a sale deed in Urdu, a translation of that sale deed dated 26.5.1959, a house tax receipt and electricity bills.

6. As regards the defendants, defendant No.1 (present appellant No.1) testified as DW1 and defendant No.2 testified as DW2, with them further relying upon documentary evidence in the shape of a wedding card, ration card and their voter identity cards.

7. Upon appraising the evidence and the pleadings, the learned Civil Judge found that as per the sale deed (Ex.P6), dated 26.5.1959, the suit property had been acquired by the plaintiff and this fact was also admitted by defendant No.1 in his cross-examination, who also admitted that the electricity meter was not in his name and that the municipal record also reflected the property to be in the ownership of his father, the plaintiff.

Hence, it was concluded by that Court that the defendants not having been able to either disprove the sale deed or to support their stand of ownership of the property, the suit property was actually in the ownership of the plaintiff.

8. Though on the issue of the defendants being licensees, the learned Civil Judge held that a son cannot be said to be a licensee in the property of his father, however, he was obviously in permissive possession thereof as his fathers' son, but with the father no longer wishing to keep his son and daughter-in-law in the premises, such permissive possession ended and as such, the plaintiff was within his right to issue notice under Section 106 of the Transfer of Property Act, 1882, he being an old person who had a right to enjoy his property peacefully.

9. Consequently, the suit of the plaintiff was decreed, directing the defendants to hand over the vacant possession of the suit property to the plaintiff within two months of the date of the judgment, passed on 11.11.2014.

10. The present appellants-defendants having filed an appeal before the learned first appellate Court, that Court also, after discussing the facts and the evidence led, as also the judgment of the learned Civil Judge, found that the possession of the appellants on the suit property was not as owners but simply permissive possession granted to them by the plaintiff, which came to an end when he asked them to vacate the premises, after which they were not entitled to retain any part thereof.

Consequently, the appeal was also dismissed, leading to the filing of the present second appeal.

11. Mr.Namit Khurana, learned counsel for the appellants, submits that appellant No.1 having been born in the same house had a right to continue to reside in it and to maintain his family there.

Upon specific query by this Court, as to whether the appellants

had been able to prove in any manner that the suit property was ancestral, learned counsel admitted that though such averment was made, it could not be proved to be so. He also could not deny that the sale deed of the suit property in favour of the respondent-plaintiff was held to be proved and the plaintiff therefore found to be the owner of the property.

12. Having considered the aforesaid, I find no merit in the appeal, in view of the fact that simply because a child continues to reside in the property of his father, during his childhood by virtue of the love and affection and parental duty of the father, and subsequently, in adulthood the father allows him to continue to reside in it, that does not create a right in the child to claim the property to be his own, unless, of course, it devolved upon the father also as ancestral property.

In the present case, the respondent-plaintiff having been proved to have acquired the property by virtue of a sale deed (Ex.P6), in the year 1959, obviously it was not ancestral property and nor could the appellants-defendants lead any evidence to prove it to be so.

Hence, with the father not being happy with the conduct of his son and daughter-in-law, and he no longer wishing that they should continue to reside in his property, in the opinion of this Court, the continued occupation of the appellants, was by permission of the respondent, till such time as he allowed them to reside in his house.

13. Thus, in fact, the learned Civil Judge has erred in holding that the appellants were not licensees whereas, as a matter of fact, once the first appellant attained adulthood, he was to be considered to be a licensee, without any interest created in him, qua the suit property.

A license is defined in Section 52 of the Indian Easements Act, 1882, as follows:-

“52. **License defined.**- Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.”

Therefore, upon appellant No.1 having attained majority, he being allowed to continue to reside in the house of his father, he actually would be a licensee in it but with no right created in the ownership of the property, in the absence of any document executed by the father, creating such right or interest in the son, i.e. in appellant No.1.

14. As regards the suit property being the matrimonial home of appellant No.2, undoubtedly, whichever home she went into and resided with her husband, was her matrimonial home. Yet, by virtue of it being a matrimonial home in that respect, it created no right or title in the second appellant-defendant to be an owner or co-owner of the property, simply because she stayed there by virtue of being her husbands' spouse, with the husband himself not having any right of ownership in the property.

15. In terms of section 62 of the Indian Easements Act, 1882, a license can be revoked either expressly or even by any act done by the licensor/grantor conveying his intent to revoke it. In the present case, the plaintiff having first orally asked the appellants to vacate the premises and thereafter having issued a notice to them, duly proved before the learned

Courts below, obviously, the license to occupy the property stood revoked immediately, with no right of the appellants to continue to live in it thereafter.

16. Even otherwise, hypothetically, if for any reason the appellants were not to be treated as licensees, their possession continued to be permissive possession till such time as they were allowed to continue to reside in the house by the respondent-plaintiff, and thereafter, there in any case being not even a plea of adverse possession raised, which would be difficult for a son to raise otherwise also, the appellants were bound to vacate the suit property, they having no right in it, once the notice period was over, (upon service of the notice dated 16.5.2013, Ex.P2, upon them).

Hence, for the reasons aforesaid, I find absolutely no merit in the appeal.

17. Learned counsel for the appellants lastly submits that the warrants of possession may not be executed for 10 days, to enable the appellants to seek alternative accommodation.

Consequently, while dismissing this appeal, execution of the warrants of possession is stayed for 10 days only.

It is made clear that the appellants would have no right to stay on the property, after the expiration of 10 days from today, i.e. till 28.9.2016.

No order as to costs.

19.9.2016
pk

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No