

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

RSA No.3833 of 2013 (O&M)

Date of decision:05.12.2016

Hari Dass

... Appellant

Vs.

Sagar Chand (since deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Anil Kshetarpal, Senior Advocate with
Mr. Karan Singh, Advocate
for the appellant.

Mr. Sachin Mittal, Advocate
for the respondent.

AMIT RAWAL J.

The appellant-defendant is aggrieved of the judgment and decree dated 05.08.2013 rendered by the Lower Appellate Court, whereby, suit at the instance of respondent-plaintiff seeking relief of mandatory and permanent injunction for handing over the possession and branding the appellant as licensee, has been decreed.

Mr. Anil Kshetarpal, learned Senior Counsel assisted by Mr. Karan Singh, Advocate for the appellant-defendant submits that no doubt, at the time when the suit was filed, the respondent/plaintiff, who is none-else but father, who was alive when suit was instituted by branding the appellant as licensee, but during the pendency of the appeal, he has died intestate without leaving any Will and therefore, he would have a right to

inherit the suit property being co-owner. He further submits that relationship of licensor and licensee is a personal and did not transferable, therefore, the respondent cannot seek execution of the decree as cause of action accrued in favour of the respondent-plaintiff (since deceased) ceased to exist. The subsequent event can be taken into consideration by the Court at any stage, much less, in the present appeal as the appeal is continuous of the suit.

Mr. Sachin Mittal, learned counsel for the respondent-plaintiff submits that the respondent-plaintiff is only seeking execution of the decree rendered in favour of Sagar Chand (since deceased). The suit would relate back to filing of the suit, much less the cause of action accrued, therefore, the subsequent event as sought to be projected and urged, would not be available. Once a licensee is always licensee and thus, urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is little force and merit in the submissions of Mr. Anil Kshetarpal as per the ratio decidendi culled out by Hon'ble Madras High Court in **Chinnan and others vs. Ranjithammal** 1931 AIR Madras 216 and also by this Court in **Sunder Lal vs. Sita Bali** 2003(3) RCR (Civil) 243, licence is not transferable. The relationship between licensor and licensee ceased to exist on the death of licensor, Sagar Chand, who is none else but father of the appellant.

It is conceded position on record that Sagar Chand had died intestate. There is no testamentary document. In the absence of the same, all

the legal heirs would have a right to succeed to the share in the equal share. In view of the subsequent event, I am of the view that cause of action accrued in favour of respondent-plaintiff (since deceased) would not be beneficial for other legal heirs.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been

*repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled." [at paras 27 - 29]"*

"27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to

continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

The judgment and decree rendered in the suit cannot be executed, therefore, the judgment and decree of the Lower Appellate Court is not sustainable and liable to be set aside. However, this will not preclude the parties to seek declaration of ownership with regard to joint or separate possession or partition by metes and bounds, in accordance with law.

Accordingly, the appeal stands allowed.

(AMIT RAWAL)
JUDGE

December 05, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No