

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

**RSA-2980-2016 (O&M)
Date of decision : 16.09.2016**

Surinder Singh

... Appellant

Versus

Jagjit Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sarju Puri, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-defendant No.1 is aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit of the respondent(s)-plaintiff(s) seeking mandatory injunction to cease and use the house in question has been decreed and the mense profit @ ₹ 1500/- per month from the date of the occupation i.e. 18.03.2008 till the handing over the possession has been ordered.

The foremost contention of Mr. Sarju Puri, learned counsel appearing on behalf of the appellant-defendant No.1 is that once the lower Appellate Court has branded the appellant in one breath as trespasser, the suit for mandatory injunction branding him to be a licensee in second breath would not be maintainable. At the best, the appellant-defendant No.1 would be a licensee of Jarnail Singh and therefore, there was no relationship of licensor and licensee with the plaintiff(s). In fact the plea taken in the written statement was that the appellant-defendant No.1 was inducted as tenant by Jarnail Singh w.e.f. 13.08.2008 @ ₹ 1500/- per month and the

rent of one year had been paid, which is evident from Ex.D-4 i.e. the agreement to sell and as well as the receipt. The lower Appellate Court below has discarded the aforementioned document as a waste paper. In the absence of the actual and main relief, the suit is liable to be dismissed, but this aspect has totally escaped the notice of the lower Appellate Court, thus, there is a illegality and perversity and urges this Court for formulation of the substantial questions of law as drawn in the memorandum of appeal.

I have heard the learned counsel for the appellant-defendant No.1 and appraised the paper book and of the view that there is a little force in the submissions of Mr. Sarju Puri viz-a-viz the nomenclature of the suit, for, accepting the findings rendered by the lower Appellate Court that the status of the appellant-defendant No.1 viz-a-viz the plaintiff is a trespasser, in my view, the suit for mandatory injunction would not be maintainable as trespasser cannot be equated to a licensee.

It is a conceded position on record that the respondent(s)-plaintiff(s) is owner by way of sale deed dated 18.12.1992 and defendant No.2 and the plaintiff were married, but however, her marriage was dissolved vide decree of divorce dated 09.04.2009. The mense profit i.e. @ ₹ 1,500/- per month w.e.f. 18.03.2008, in my view, is perfect, legal and justified as Jarnail Singh had not been able to prove that he had actually received the amount. The receipt attached with the agreement to sell has not been proved, rightly so, the agreement to sell and the receipt have been discarded. At the best, the respondent(s)-plaintiff(s) can be called upon to pay Court fees seeking possession, if the findings qua recording the status of the appellant-defendant No.1 as trespasser is to be accepted.

For the foregoing reasons, the judgment and decree of the lower

Appellate Court with regard to the decree of possession is upheld.

However, it is made clear that the respondent(s)-plaintiff(s) shall be able to execute the judgment and decree only on the payment of the Court fees.

With the aforesaid modification in the judgment and decree of the lower Appellate Court, the appeal stands disposed of.

16.09.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No