

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4207 of 2016 (O&M)

Date of Decision: October 07, 2016

Surinder Kumar

...Appellant

Versus

Ashok Kumar & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Sandeep S. Majithia, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.10833-C of 2016

For the reasons mentioned in the application, which is supported by an affidavit, delay of 73 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.4207 of 2016

Appellant-defendant is aggrieved of the decretal of the suit for mandatory injunction, whereby he was directed to hand over the possession.

Mr.Sandeep S.Majithia, learned counsel for the appellant-defendant submits that the respondent-plaintiffs instituted the suit on the premise that they are owners of the property by virtue of the sale deed dated 13.1.1997, alleged to have been executed by Sain Dass, father of the parties to the lis. In fact, the appellant-defendant is in possession of the property much prior thereto. The respondent-plaintiffs have failed to prove the sale deed, much less ownership and, therefore, could not have resorted

to the proceedings initiated under Section 39 of the Specific Relief Act. In fact, the appellant is not a licensee as the property was purchased from the funds of the Joint Hindu Family. All these factors have escaped the notice of the Courts below while decreeing the suit.

I have heard the learned counsel for the appellant-defendant and appraised the paper book.

The conceded position on record is that the appellant-defendant and respondent-plaintiff No.1 are brothers, whereas respondent-plaintiff No.2 is wife of plaintiff No.1. There is no challenge to the sale deed alleged to have been executed by Sain Dass. On the basis of the ownership, the possession of the appellant-defendant is of a licensee, which has been revoked by sending a legal notice dated 28.1.2000. The suit was filed on 23.2.2000. In case, the licensee does not vacate the premises of the licensor, then there is a breach of obligation and rightly so, the suit under Section 39 of the Specific Relief Act has been filed. In fact, there is alternative relief of possession too.

I am of the view that once the possession is admitted, which is not based upon adverse possession or any other provisions of law. On service of the notice, it becomes a trespasser. Appellant-defendant has also failed to prove that the property was purchased out of the joint funds, in essence has not led any evidence in support of the averments in the written statement.

For the foregoing reasons, I do not intend to differ with the findings rendered by the Courts below, which are based on appreciation of oral and documentary evidence, much less no substantial question of law arises for determination. No case for interference is made out.

Appeal stands dismissed.

**October 07, 2016
ramesh**

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No