

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

**Regular Second Appeal No.5054 of 2016 (O&M)
Date of Decision: October 27, 2016.**

Ravinder Pal Singh and another

.....APPELLANT(s).

VERSUS

Kanwarjit Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arun Jain, Senior Advocate with
Mr. Vaibhav Sehgal, Advocate
for the appellant (s).

Mr. Vikas Bahl, Senior Advocate with
Mr. Parvinder Singh, Advocate
for the respondents.

SURINDER GUPTA, J.

This is appeal by Ravinder Pal Singh and Arvinder Pal Kaur against the concurrent judgments of the Courts below whereby the suit filed by respondent-plaintiff was decreed and the appellants were directed to vacate portion of disputed premises in their possession as licensee and hand over the vacant possession of the same to the plaintiff. They were also restrained from interfering in the possession of the plaintiff over the portion in which they are residing.

2. The case of respondent-plaintiff, in brief, is that the suit property was owned by Prith Paul Singh, (father of plaintiff and defendant No.1 Ravinder Pal Singh), who vide sale deeds dated 20.06.2007 and

20.10.2007 (later defined as transfer deed in the replication) transferred the title of the suit property in favour of plaintiff. Defendant No.1 was allowed to live in two rooms, kitchen, bathroom, store, latrine as licensee by Prith Paul Singh. The licence of appellants was revoked vide letter dated 05.05.2007 and vide public notice dated 08.05.2007 published in a newspaper Prith Paul Singh informed the general public that he had disinherited defendant No.1 from his entire estate. After revoking of licence, defendants were asked to leave the licensed premises and to hand over the vacant possession to the plaintiff but they postponed the matter on one pretext or the other. Instead of vacating portion in their possession as licensee, defendants threatened that they will not allow the plaintiff to remain in occupation of the portion of the property in their possession and also tried to occupy the same but could not succeed due to timely intervention of the respectables of the locality.

3. Appellants-defendants in their written statement challenged the locus standi of plaintiff to file the suit and denied relationship of licensor and licensee between the plaintiff and the defendants. They claimed suit property as Hindu Undivided Family (HUF) property, which was purchased by Prith Paul Singh from the funds of joint Hindu family and put in common hotchpotch. They alleged that this suit was filed by the plaintiff in connivance with Prith Paul Singh.

Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether plaintiff is entitled to the relief of mandatory injunction as prayed for in the head note of plaint? OPP
- (2) Whether the plaintiff is entitled to the relief of

permanent injunction as prayed for? OPP

- (3) Whether the suit is not maintainable in the present form? OPD
- (4) Whether plaintiff has no locus standi to file the present suit? OPD
- (5) Whether plaintiff is estopped by his act and conduct from filing the suit? OPD
- (6) Whether suit is not properly valued for the purpose of court fee and jurisdiction? OPD
- (7) Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
- (8) Relief.

4. Learned Addl. Civil Judge (Senior Division), Ludhiana held the property in dispute as self-acquired property of Prith Paul Singh and observed in para 10 of the judgment as follows:-

“10. From the cross-examination of plaintiff and defendant no.1, it is clear that the property was purchased by Prithipal Singh father of the plaintiff and defendant no.1 from his own funds and he was member of Ludhiana Officers Co-operative House Building Society and at that time, defendant no.1 was three years old only and there is no chance of contribution by him in the funds of joint Hindu family and nothing has come on record to show that the property in dispute is HUF property. The letter produced on record written by Prithipal Singh to the Municipal Corporation cannot change the nature of the property as HUF unless and until it is proved by the defendants that the property in dispute is HUF property. Defendant no.1 in cross-examination admitted that the sale deed was executed by Improvement Trust in favour of Prithipal Singh and mutation was also sanctioned in his favour and he also admitted in cross examination that on the basis of said sale deed, Prithipal Singh vide two sale deeds in the year 2007 sold the property in dispute in favour of Kanwarjit Singh plaintiff.”

5. Appellant filed the appeal against the judgment and decree passed by Additional Civil Judge (Senior Division), which was dismissed by Additional District Judge, Ludhiana. Not satisfied, the appellants-defendants have filed the instant appeal.

6. I have heard learned counsel for the parties and have perused the paper book with their assistance.

7. During the course of arguments, learned counsel for the appellants, while assailing the observations of the Courts below that disputed house was self acquired property of Prith Paul Singh, has raised following substantial questions of law:-

(i) Property in dispute is proved to be HUF property of Prith Paul Singh by documentary evidence on record. He has referred to a communication by Prith Paul Singh dated 09.02.1988, wherein opposing the proposed house tax, he had stated that the suit property is owned by HUF of which appellant Ravinder Pal Singh was a member. He further argued that the appellant sought information regarding HUF income tax return filed by Prith Paul Singh under Right to Information Act but the same was not supplied as Prith Paul Singh raised objection against disclosing the secrecy to the informant which show that the property was HUF property. Courts below committed grave error while discarding above evidence while concluding that suit property was self acquired property of Prith Paul Singh.

(ii) Sale deed (Ex.P1) was executed by the Improvement Trust in favour of Prith Paul Singh and his heirs as such, Prith Paul Singh was not exclusive owner of the suit property and could not alienate the same to

plaintiff.

(iii) Plaintiff is claiming title over the suit property on the basis of two documents dated 20.06.2007 and 20.10.2007 which in the plaint he described as sale deeds but in fact these are release deed. These documents cannot be taken into consideration being beyond pleadings, despite the fact that in replication, plaintiff had explained that these documents are release deed, as replication is not part of pleadings.

(iv) As per the case of the plaintiff, licence of appellant was revoked by Prith Paul Singh vide communication dated 05.05.2007. The property came to the plaintiff by way of transfer deed executed in the months of June and October, 2007. By that time, the relationship of licensor and licensee with Prith Paul Singh was over, as such, had not travelled to the plaintiff, consequently, this suit is not maintainable.

(v) The possession of part of the suit property continued with appellant, as such, for want of delivery of possession, the document of title dated 20.06.2007 and 20.10.2007 which can be treated as gift deeds, are not valid.

(vi) The execution of the title deeds dated 20.06.2007 and 20.10.2007 is not proved as per the provisions of Section 68 of Evidence Act. The appellant had denied these documents and no marginal witness was examined, as such, both the Courts have committed grave error while taking the same as document of title of plaintiff.

8. Learned counsel for the respondent-plaintiff in his detailed submissions, has refuted all the points raised by learned counsel for the appellants and has argued that no substantial question of law arises in this

appeal and neither of the submission of learned counsel for the appellants point out that there is any misreading of evidence on record or any document has been ignored by the Courts below while reaching the conclusion that plaintiff is owner of the suit property and status of appellant No.1 was that of a licensee. Admittedly, the suit property was allotted to Prith Paul Singh by Improvement Trust, Ludhiana. Though appellants-defendants alleged it to be joint Hindu family property, yet have nowhere pleaded and proved that Prith Paul Singh owned any joint Hindu family property, from the income of which suit property was purchased, as such, it was his self-acquired property, which he transferred in the name of plaintiff by executing release deeds.

9. I take the plea raised by learned counsel for appellants as substantial questions of law and proceed to discuss the same to find whether the observations/findings recorded by Courts below are perverse and against law and evidence on record.

Point (i) Whether property in dispute is proved to be HUF property by documentary evidence on record, which the Courts below have ignored and wrongly discarded?

Point (ii) Whether sale deed (Ex.P1) was executed by the Improvement Trust in favour of Prith Paul Singh and his heirs as such, Prith Paul Singh being not its exclusive owner could not alienate the same to plaintiff?

10. The Courts below have relied upon on the sale deed executed by Improvement Trust, Ludhiana in favour of Prith Paul Singh (Ex.P1), which was not denied by the appellants-defendants. They have claimed that this property was purchased from the joint Hindu family funds. The onus, thus, shifted upon the appellants-defendants to prove their plea but they

failed to produce any evidence to show that there was any joint nucleus from the funds of which the suit property was purchased. It is not disputed that at the time of allotment of plot to Prith Paul Singh in the year 1968, appellant No.1 was three years of age. All the instalments were paid in the year 1971 when he was 6-7 years of age.

11. While stressing that suit property was joint Hindu family property in the hands of Prith Paul Singh, entire stress of the counsel for the appellants is on two documents. First is the letter written by Prith Paul Singh to Municipal Corporation, Ludhiana wherein while filing objection against the assessment of house tax, he took the plea that his son Ravinder Pal Singh (appellant) is a member of HUF to which the suit property belong. It appears that above plea was taken by Prith Paul Singh just to create ground to avoid fixation of house tax by the Municipal Corporation. Nothing was produced on record to show that this plea of Prith Paul Singh was accepted by the Municipal Corporation or he produced any evidence to support this plea. This document, as such, has rightly been discarded by the Courts below. The other document referred by learned counsel for the appellants is the refusal to supply the income tax return of HUF to the appellant by Income Tax Authorities. This document in no manner proves that the suit property belong to the HUF. There is no evidence on record that Prith Paul Singh by any of his act put the suit property in common hotchpotch so as to consider the same as HUF property.

12. Learned counsel for the respondent-plaintiff has drawn my attention to various documents written/executed by appellant Ravinder Pal Singh which show that he was having no confusion or ambiguity in his

mind that the suit property is self-acquired property of Prith Paul Singh.

The documents proved on record are as follows:-

- (i) Letter written by appellant Ravinder Pal Singh to Bharat Petroleum Corporation Limited Ex.P7/Ex.PX/2 wherein he stated in para 3 as follows:-

“I have arrange a show room in a prominent and posh colony namely- 21 J Sarabha Nagar, Ludhiana. The show room is owned by my father, Shri Prithi Paul Singh, who is ready to give me for use. The rough sketch of the show Room is also endorsed.”

- (ii) Letter written by Divisional Manager, Bharat Patroleum Corporation Limited Ex.P8/Ex.PX/3, wherein Petroleum Corporation intimated Ravinder Pal Singh as follows:-

“We acknowledge receipt of your letter dated 11.5.1987.

We write to advise you that -

-Showroom located at 21 J, Sharabha Nagar, Ludhiana which is owned by Shri Prithi Paul Singh, is suitable as per our requirements.”

- (iii) Letter written by appellant Ravinder Pal Singh to his father Prith Paul Singh Ex.PA/2 regarding the payment of rent which reads as follows:-

“Respected Sir,

Enclosed will find an account payee cheque for Rs.3600/- bearing cheque No.000601 dated 24.3.2008 drawn on Kotak Mahindra Bank for period 1.4.2007 to 31.3.2008 as rent upto 31.3.2007 stood already paid and received by you. This is being issued keeping in view demand raised by you as well as past demands in this regard and in continuation of your letter dated 5.2.2007.

This is for your kind information.”

It is admitted that appellant No.1 is carrying on LPG distributorship at Ludhiana in a showroom in the garage of the disputed property.

(iv) Ravinder Pal Singh had matrimonial litigation with his wife Barjinder Kaur. She had taken a plea in the application Ex.P9/Ex.PX/5 claiming maintenance that Ravinder Pal Singh owns the disputed house. However, in reply (Ex.PX/5), he denied the contention of his wife and stated that disputed house is owned by his father Prith Paul Singh. He took the plea that even the Gas Agency was taken by his father in his name from his pensionary benefits and he is paying rent of ₹300/- per month regarding the showroom to his father. Similar plea was taken by him in his affidavit Ex.P10.

(v) In his cross-examination which has been comprehensively quoted by learned trial Judge in his judgment, the appellant made following admissions:-

(a) *It is correct that sale deed was executed by Improvement Trust in favour of Prithipal Singh.*

(b) *Mutation was also sanctioned in favour of Prithipal Singh and also in TSI record. I know that on the basis of said sale deed, Prithipal Singh vide two sale deed in the year 2007 sold the property no.21-J Sarabha Nagar in favour of Kanwarjit Singh.*

(c) *I for the first time had become aware of the transfer of the property in question by Prithipal Singh to Kanwarjit Singh vide registered transfer deeds when I had filed a suit for injunction. In that injunction suit, I did not challenge the said transfer deed nor I sought any*

relief against the same. Volunteered I have subsequently filed another suit.

(d) I cannot tell if my father Prithipal Singh was an independent income tax assessee or not. Volunteered I only know that he used to file returns as HUF. I myself individually an independent income tax assessee. Similarly, the plaintiff Kanwarjit Singh is also individually an income tax assessee. I do not know if any joint account statements or balance sheets between myself, Prithipal Singh and Kanwarjit Singh were prepared. Volunteered it will be known to my father. I do not remember, if the plaintiff and myself have jointly purchased or sold any property. I do not remember if Prithipal Singh and myself have jointly purchased or sold any property. A balance sheet is prepared regarding my business concern of Ravindera Gas Agency as myself being the proprietor. I do not know if any balance sheet of the plaintiff is prepared or not. My returns are audited by my chartered accountant.

(e) I have got mentioned the fact of execution of HUF deed and the filing of returns by the HUF in my written statement. Attention of witness drawn towards his statement, where this fact is not so mentioned. Volunteered I have taken a plea that there was an HUF. A PAN no. was applied for HUF. I do not remember I had mentioned any such fact in my written statement or affidavit. Attention of witness drawn towards his written statement and affidavit where it is not so recorded. I do not remember if I have produced any such deed or PAN no. till date in this case or if I have shown or disclosed any such record to my counsel. I did not disclose the PAN no. of any such HUF in my application mark A.

13.

Learned counsel for the appellants while referring to the

observations in case of *N. Tyagaraju Vs. S. Narayan Swamy & Ors 2014 (3) C.C.C. 120(A.P.)* has argued that whenever admission is made in writing about the suit property alleging that it is a joint Hindu family property, the nature of property as joint Hindu family property is duly established. He has also relied on *Ramabai Shrinivas Nadgir Vs. Government of Bombay AIR 1941 Bombay 144*, in support of his contention. The above citations have been referred by learned counsel for the appellants to impress that Prithi Paul Singh in his letter before the Municipal Corporation (Ex.D84) while objecting the proposed house tax had stated that his son Ravinder Pal Singh is a member of HUF to which the suit property belongs.

14. In case of *Gurjant Singh Major and others Vs. Surjit Singh and others 2004(3) R.C.R. (Civil) 93*, a Co-ordinate Bench of this Court while dealing with similar aspect, has observed in para 19 that nature of a property cannot be held to be ancestral property merely on the basis of admission. In this case, there is direct evidence that the property in dispute was allotted in the name of Prith Paul Singh. The averment that this property belong to HUF in letter to Municipal Authorities, while opposing imposition of house tax appears to have been taken to avoid house tax. Even otherwise, the letter has no relevance until and unless, it is proved that the authorities before which this averment was made, accepted the same and treated suit property as joint Hindu family property, gave any benefit to Prith Paul Singh. In case of *Suman Vishnu Pathak Vs. Usha w/o Prabhakar Rao Kopartar 2013(2) CivCC 123(Bombay High Court)*, it was observed that when a property stands in the name of a particular person, presumption is that it is his self-acquired property unless it is shown that it

is acquired from the nucleus of joint Hindu family. Bombay High Court in case of ***Ramabai Shrinivas Nadgir Vs. Government of Bombay(supra)***, has also observed that a party is not bound by an admission in his pleading except for the purpose of suit in which pleading is delivered. The observation of the Division Bench in that case are extracted as follows:-

“A party is not bound by an admission in his pleading except for the purpose of the suit in which he pleading is delivered. It frequently happens that a party is prepared in a particular suit to deal with the case of a particular ground and to make an admission, but that admission is not binding in any other suit, and certainly not for all time.”

15. In the case of ***N. Tyagaraju Vs. S. Narayan Swamy & Ors (supra)***, the observations were made that admission binds a party in view of the specific facts of that case which are not applicable to the facts and circumstances of the present case, where even the appellants due to their own act and admission have no confusion in their mind that suit property is not joint Hindu family property.

16. Admittedly, there is no averment in the written statement regarding any joint nucleus from which the suit property was purchased so as to label it as HUF. In the absence of any evidence on record, the Courts below have committed no error while concluding that the suit property is proved to be self-acquired property of Prith Pal Singh.

17. Another argument advanced by learned counsel for the appellants is that even the sale deed regarding the suit property was executed by Improvement Trust on 28.05.1998 in favour of Prith Paul Singh and his sons.

18. Perusal of sale deed Ex.P1 clearly indicates that submission of

learned counsel for the appellant are erroneous and against the contents of documents on record, which unambiguously recite that disputed plot was allotted, mutated and handed over to Prith Paul Singh. It was, however, mentioned that Prith Paul Singh, his representatives and legal heirs will remain bound by the terms of the agreement with the Improvement Trust and raise the construction of the house within the time prescribed. The above reference was made in order to bind the allottee and his representatives like legal heirs and subsequent vendees with the terms of allotment made in the name of Prith Paul Singh. Contentions of learned counsel for the appellants on both the points are rejected.

Point (iii) Whether transfer deeds dated 20.06.2007 and 20.10.2007 cannot be taken into consideration being beyond pleadings as plaintiff mentioned these documents as sale deeds in plaint. Clarification in replication that these documents are release deeds, has no meaning as replication is not part of pleadings?

19. The argument of learned counsel for the appellants are two folds; firstly that nothing beyond pleadings can be looked into. Plaintiff had alleged sale deed of suit property in his favour but has not produced any sale deed, as such, documents dated 20.06.2007 and 20.10.2007 which are release deeds could not be looked into by the courts below and secondly, the averments in the replication are not part of pleadings. He has relied on following citations:-

(a) ***Azhar Sultana Vs. B. Rajamani & Ors 2009(2) CCC 001(SC)***, wherein it has been held that the contentions raised in the replication for the first time is impermissible under law.

591(Delhi) that pleading means plaint and written statement and replication is not pleadings.

(c) ***Swaran Kaur Vs. Harjit Singh; 2000(2) CCC 477 (P&H)*** that no new case can be permitted to be set up in the replication.

(d) ***Sushila Devi Vs. The State of Punjab and Ors 1996(2) All Instant Judgments 59*** that by way of replication, petitioners can be permitted only to rebut the assertion made by the respondent in written statement. No new case can be permitted to be set up by the petitioner.

20. There is no dispute with regard to the principle of law relating to the replication. The fact to be seen in this case is as to whether respondent No.1 has raised a new plea or has simply explained the plea already taken in the plaint. Perusal of the plaint shows that in para 1, plaintiff pleaded as follows:-

“..... Shri Prith Paul Singh thereafter sold the entire property to the plaintiff through two registered sale deeds i.e. sale deed dated 20.6.2007 and 20.10.2007. Photostat copies of the said sale deeds are attached herewith.”

21. The defendants denied these sale deeds in the written statement. In the rejoinder/replication, respondent-plaintiff clarified the documents dated 20.06.2007 and 20.10.2007 as follows:-

“In token of love and affection and magnanimity shown by the plaintiff by not taking any amount from Shri Prithi Paul Singh, he executed two transfer deeds bearing Wasika No.6452 dated 20.06.2007 and transfer deed bearing Wasika No.12957 dated 22.10.2007 regarding property No.21-J, Sarabha Nagar, Ludhiana so as to compensate the plaintiff for his services and love and affection towards Shri Prithi Paul Singh.”

22. Perusal of the above pleadings shows that respondent-plaintiff

had not raised any new plea in the replication. They had simply explained the documents which were mentioned in the plaint, copies of which were attached with the plaint. The appellant may have been taken by the surprise if the respondent-plaintiff had not mentioned both the documents in the plaint and had not attached copies of the same. Even if a document which has been placed on record and relied is wrongly described, nature of the document can be ascertained on its perusal. The citations referred by learned counsel for the appellants, in no manner, advance the plea raised by learned counsel for the appellants. A Division Bench of this Court in case of ***Salig Ram and another Vs. Shiv Shankar and others*** 1971 AIR (Punjab) 437 observed as follows:-

“It is a well settled rule that replication is a part of the pleadings and anything which is specifically stated in the replication and for the first time, has to be controverted, and if it is not controverted and is allowed to pass it, must be assumed that the plea raised is accepted.”

23. A Co-ordinate Bench of this Court in case of ***Firm Rattan Lal and Co. Vs. Dev Raj*** 1993(2) R.R.R.439, observed that the replication is part of pleadings. Delhi High Court in case of ***Chand Vs. Jagmander Dass*** (*supra*), which has been relied by learned counsel for the appellants observed as follows:-

“In the present case, the question is not whether Sri Bhagwan was the adopted son of Hira Lal but the question is whether Hira Lal Sri Bhagwan had any right to remain in possession of the premises. Thus, it was not necessary for the respondent to plead that Sri Bhagwan was the adopted son of Hira Lal. In fact the appellant in the written statement pleaded that Sri Bhagwan was son of the appellant and that appellant had been in possession of the premises. In reply the respondent-landlord

was justified to state that Sri Bhagwan was the son of the appellant but had been given in adoption to Hira Lal. The appellant sufficiently pleaded that the respondent had parted with the possession of the premises without his consent to Hira Lal Sri Bhagwan. It cannot be said that the pleading lacks any material particular or that it does not disclose any cause of action.”

24. While appearing as witness, appellant admitted that he was aware of transfer of suit property by Prith Paul Singh in the year 2007 to Kanwarjit Singh. Part of his statement to this effect is extracted as follows:-

“I for the first time had become aware of the transfer of the property in question by Prithpal Singh to Kanwarjit Singh vide registered transfer deeds when I had filed a suit for injunction. In that injunction suit, I did not challenge the said transfer deed nor I sought any relief against the same. Volunteered I have subsequently filed another suit.”

25. Once a document relied upon by the respondent-plaintiff has been placed on file and made part of the pleadings, no prejudice was caused to the appellants-defendants regarding the nature of the document which they themselves are somewhere referring as sale deeds and somewhere as transfer deeds. Above discussion of facts and evidence on record leaves no doubt or confusion about pleadings of respondent-plaintiff and nature of two deeds executed by Prith Paul Singh in favour of respondent-plaintiff. Arguments on this point raised by learned counsel for the appellants are without basis and are rejected.

Point (iv) As per the case of the plaintiff, licence of appellant was revoked by Prith Paul Singh vide communication dated 05.05.2007. The property came to the plaintiff by way of transfer deed executed in the months of June and October,

2007. By that time, the relationship of licensor and licensee with Prith Paul Singh was over, as such, had not travelled to the plaintiff, consequently, this suit is not maintainable.

26. Learned counsel for the appellants has argued that as per case of plaintiff licence in favour of appellant was created by his father Prith Paul Singh and the case of the respondent-plaintiff Kanwarjit Singh was that Prith Paul Singh revoked the licence vide notice dated 05.05.2007. Plaintiff became owner of the suit property in the month of June and October, 2007 and when status of appellants as licensee had already been revoked. Plaintiff never stepped into the shoes of licensor, as such, the present suit is not maintainable.

27. Before proceeding further, it will be relevant to have a look at term 'License' which has been defined in Section 52 Indian Easement 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.”

28. Apex Court in case of ***Sant Lal Jain Vs. Avtar Singh 1985 (2) SCC 332*** observed that a licensee is always a licensee and cannot set up title of the property for himself or anyone else. While elaborating this fact, apex Court observed in para 8 of the judgments as follows:-

“8. The respondent was a licensee, and he must be deemed to be always a licensee. It is not open to him? During the subsistence of the licence or in the suit for recovery of possession of the property instituted after the revocation of the licence to set up title to the property in himself or anyone else.

It is his plain duty to surrender possession of the property as a licence and seek his remedy separately in case he has acquired title to property subsequently through some other person. He need not do so if he has acquired title to the property from the licensor or someone else lawfully claiming under him, in which case there would be clear merger. The respondent has not surrendered possession of property to the appellant even after the termination of the licence and the institution of the suit. The appellant is, therefore, entitled to recover possession of the property.”

29. While referring to the observations in case of ***Milkha Singh Vs. Diana, AIR 1964 Jammu and Kashmir 99***, Apex Court observed that the principle 'once a licensee always a licensee' would apply to all kinds of licences and that it cannot be said that the moment the licence is terminated, the licensee's possession becomes that of a trespasser and referred to the following observations in that case:-

“After the termination of licence, the licensee is under clear obligation to surrender his possession to the owner and if he fails to do so, we do not see any reason why the licensee cannot be compelled to discharge this obligation by way of a mandatory injunction under section 55 of the Specific Relief Act. We might further mention that even under English law a suit for injunction to evict a licensee has always been held to be maintainable.”

30. In case of ***Joseph Severance and others Vs. Benny Mathew and others 2005(7) SCC 667***, Hon'ble Apex Court regarding maintainability of the suit for injunction and observed as follows:-

“Strictly speaking the question is not a substantial question of law, but one whose adjudication would depend upon factual adjudication of the issue relating to reasonableness of time. The correct position in law is that the licensee may be the actual occupant but the licensor is the person having control or

possession of the property through his licensee even after the termination of the licence. Licensee may have to continue to be in occupation of the premises for sometime to wind up the business, if any. In such a case licensee cannot be treated as a trespasser. It would depend upon the facts of the particular case. But there may be cases where after termination or revocation of the licence the licensor does not take prompt action to evict licensee from the premises. In such an event the ex-licensee may be treated as a trespasser and the licensee (licensor ?) will have to sue for recovery of possession. There can be no doubt that there is a need for the licensor to be vigilant. A licensee's occupation does not become hostile possession or the possession of a trespasser the moment the licence comes to an end. The licensor has to file the suit with promptitude and if it is shown that within reasonable time a suit for mandatory injunction has been filed with a prayer to direct the licensee to vacate the premises the suit will be maintainable.”

31. As per the observations of Apex Court in the above referred case, status of licensee always remain that of a licensee and never as of trespasser, consequently, the argument raised by learned counsel for the appellants that the respondent-plaintiff had not stepped into the shoes of licensor after revocation of licence has no merits. Even after the revocation of licence of the appellant No.1 by his father vide notice dated 05.05.2007, status of the appellant continued to be that of licensee and respondent-plaintiff who has stepped into the shoes of licensor, is entitled to claim possession of such property.

32. Learned counsel for the appellants has argued that licence is personal between the grantor and licensee and is not transferable and the permissive possession extinguishes on the demise of the licensor. In

Anr. Vs. Ram Partap & Ors. 2015(5) Law Herald (O&H) 4571, where the above observations have been made by a Co-ordinate Bench of this Court keeping in view the provisions of Section 52 and 62 of Indian Easements Act, 1882 referred above. In that case, licensor had died in the year 1934 and litigation ensued in the year 2003. The party in possession was found “holding a right in property as true owner”. The Court was dealing with the plea raised by the party in possession that he had become owner of the suit property by way of adverse possession and keeping in view continuous possession for about 7/8 decades, plea of party in possession was granted. As already discussed, Apex Court has observed in the citation referred above that the possession of licensee is always of a licensee and never as trespasser. In this case, Prith Paul Singh after revocation of licence of appellants transferred the property within five months in favour of respondent-plaintiff Kanwarjit Singh, who within one month of transfer of property in his name, filed the instant suit. In the event of plea of appellant No.1 that the suit property is joint Hindu family coparcenary property in which he has share being rejected, his status remains as a licensee and the Courts below have committed no error of law while decreeing the suit of plaintiff. The findings on point No.(iv) are recorded against the appellants-defendants and in favour of respondent-plaintiff.

Point (v) *Whether the possession of part of the suit property continued with that of appellant, as such, for want of delivery of possession, the document of title dated 20.06.2007 and 20.10.2007 which are of the nature of gift deeds, are not valid?*

Point (vi) *Whether the execution of the title deeds dated 20.06.2007 and 20.10.2007 is not proved as per the provisions of Section 68*

of Evidence Act?

33. Both the above points have been taken up together being interconnected and to avoid repetition of evidence. Learned counsel for the appellants has argued that the transfer deeds vide which title was vested in respondent-plaintiff, can be termed as gift deed which were not valid as the possession of part of property which is subject matter of gift deeds remained with appellants and without delivery of possession, the gift is not complete.

34. Section 122 of Transfer of Property Act, 1882 defines “Gift” and Section 123 prescribes how transfer is effected. Both the Sections are reproduced as follows:-

“122. 'Gift' defined.—'Gift' is the transfer of certain existing moveable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Acceptance when to be made.—Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

123. Transfer how effected.— For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.”

35. Defining the above provisions, Dr. Hari Singh Gaur in his book “Commentary on Transfer of Property Act, 1882” elaborates the above provisions as follows:-

“24. Gifts—Delivery of possession not necessary—

Execution of registered deed essential.—Section 123 of the Act merely seems to have an effect rendering unnecessary for the delivery of possession, substituting, as it does, registration for delivery of possession. Even a reading of Sec.123 of the Act shows that for making a gift of immovable property, transfer must be effected by a registered document signed on behalf of the donor and attested at least by two witnesses. Under Sec.122 of the Act, delivery of possession is not necessary for acceptance of the gift.”

36. Even if, plea of learned counsel for appellants be accepted and release deeds be treated as 'gift deeds', the same are not invalid for the reason that part of suit property is in possession of appellants as licensee/tenant. When a deed of transfer of immovable property is a registered document, delivery of possession is not a requirement to complete the transaction, even if it is treated as 'gift deed'.

37. Learned counsel for the appellants has argued that the plaintiff has denied the execution of the release deed dated 20.06.2007 and 20.10.2007. Respondent-plaintiff has not produced any evidence to prove these release deeds as per provisions of Section 68 of Evidence Act. He has further argued that as per the recital in the release deed, possession of the property was given to the respondent-plaintiff while admittedly two rooms and kitchen on the first floor are in possession of the appellants as licensee and garage is in his possession as tenant, as such, the release deeds are liable to be set aside on this ground. He has relied on ***Kirpal Kaur Vs. Jatinder Pal Singh & Ors 2015(3) RCR (Civil) 826(SC)***, wherein it was observed that where a donee is not in possession of the suit property, the

gift is not valid. He has also relied on ***K. Laxmanan Vs. Thekkayil***

Padmini and others 2009(1) SCC 354, wherein it was observed that when a gift deed is disputed, it is required to be proved under Section 68 of Evidence Act. He has also referred to the observations of Apex Court to similar effect in cases of ***Rosammal Issetheenammal Fernandez (dead) by LRs Vs. Joosa Mariyan Fernandez 2000(4) RCR (Civil) 247; Harnam Singh and others Vs. Dalip Singh and anr. 1963 PLR 1133(P&H)(DB); Delhi Diocesan Trust Association Vs. Ashwani Kumar 2014(3) RCR 985*** and ***South Bihar Sugar Mills Ltd. Bihta Vs. Maharaj Prasad Singh and others AIR 1966 Patna 75***.

38. Release deeds dated 20.06.2007 and 20.10.2007 were executed by Prith Paul Singh, father of the parties. Admittedly, he died on 13.05.2011 i.e. much after the filing of the suit. It is Prith Paul Singh who revoked the licence of appellants before transferring the property in favour of respondent-plaintiff and never denied or challenged the execution of the release deed. The observations in citations referred by learned counsel for the appellants are not applicable to the facts of the present case. In case of ***Kirpal Kaur Vs. Jatinder Pal Singh & Ors (supra)***, it was observed that the gift deed executed by a person during the pendency of the suit when he is not in possession of the suit property, is not valid. In this case, Prith Paul Singh was in possession of the suit property. Even the possession of licensee/tenant is the possession of the owner/landlord, as such, this plea is not available to the appellants.

39. In case of ***K. Laxmanan Vs. Thekkayil Padmini and others (supra)***, two documents were in dispute; one was Will and other was gift deed. Both were executed on the same day. The signatures of the executant

on the Will were found suspicious and so was the fate of the gift deed and the observations were made that the gift deed should have been proved in accordance with the provisions of Section 68 Evidence Act.

40. In this case, as already discussed, Prith Paul Singh had admitted the execution of the gift deed and even written letter to the Municipal Authorities for transfer of the property in the name of transferee as per the release deed. Here it will be relevant to have a look on the provisions of Section 68 Evidence Act which reads as follows:-

“68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”

41. In this case, the release deeds were executed by Prith Paul Singh. He was alive when the litigation ensued and never contested or challenged the release deed. Prith Paul Singh vide his communication dated 02.01.2009 (Ex.PX/3) had requested the Zonal Commissioner, Municipal Corporation, Ludhiana (2 documents have been marked as Ex.PX/3; one is intimation to appellant regarding sanction of his LPG Distributorship; and second is this communication dated 02.01.2009). In this communication Prith Paul Singh intimated the Municipal Authorities about the release deed

Kanwarjit Singh(respondent-plaintiff) and requested to change the ownership of the disputed house in favour of his aforesaid son. Perusal of this communication shows that appellants have even raised objections before the Municipal Authorities, which were rejected. A perusal of the letter will make the things clear, as such, is being reproduced as follows:-

“Subject:- Change of Name in TSI-House No.21-J. Sarabha Nagar, Ludhiana M.C. No. B.XX.4512/1221/45, transferred in the name of my son Kanwarjit Singh.

Sir,

Your kind attention is invited to my application dated 15.11.2007, in which I had requested you to kindly change the name in TSI-of the above mentioned house owned by me, in the name of my eldest son Kanwarjit Singh, in TS-I, as I have transferred my house through registered deeds No.6452 dated 20.6.2007 and No.12957 dated 22.10.2007. Photocopies of these Vasikas have already been supplied with the original applications. Mutation in respect of the house has been entered in the record of Patwaris.

2. My son Kanwarjit Singh had also given application on 15.11.2007 for transfer of TSI in his name and he has filed affidavits on 13.11.2007 and on 27.8.2008.

3. But so far, the name in the TS-I has not been changed from my name to that of Kanwarjit Singh though more than one year passed.

4. I have come to know that there is some hitch in your Branch as my younger son Ravinderpal Singh has been filing some applications on flimsy and frivolous grounds to stop your Branch changing the name. Ravinderpal Singh has no locus standi to file such applications and thwart the change of name.

5. As already mentioned in the opening para of my application dated 15.11.2007, the house in question is my self-acquired property. I had purchased the plot from Improvement Trust, Ludhiana in 1968, when Ravinderpal Singh was aged

about 3 years, after becoming the member of 'the Ludhiana Officers Co-operative House Building Society Limited' Ludhiana and paid the price in instalments fixed by the Trust. I raised construction on the plot after getting loans from Government and others and my own savings. This house is my self-acquired property and is not an ancestral property. I have disinherited Ravinderpal Singh and his wife Arvinder Kaur from my moveable and immovable property through a Public Notice appearing in Daly Tribune dated 7.5.2007, a photocopy of the Public Notice has been attached with the application dated 15.11.2007.”

42. Perusal of Section 68 of Evidence Act shows that in order to prove a release deed which has been registered in accordance with the provisions of Indian Registration Act, 1908 examination of attesting witness is not required. Proviso to this Section clarified that the propounder of such a deed is required to call attesting witness only when the executor of the deed has specifically denied its execution. In this case, executor who was alive till 2012 never denied the execution, rather supported the same. As such, conclusion drawn by the Courts below that the examination of attesting witness was not required is in accordance with law.

43. The facts of the case ***Harnam Singh and others Vs. Dalip Singh and anr.(supra)*** where the observations were made that the examination of attesting witness is required when the denial of registered document is by the contesting party and not by the executor. In that case, executor of the document namely Kuldeep Singh was not a party to the suit and a certified copy of sale deed was produced, as Exhibit-C, which was accepted by Courts below as roof of transfer of title by Kuldeep to his vendee. While making the above observations, the Division Bench has

was produced on file without objection.' The observation in this regard made by Hon'ble Division Bench are extracted as follows:-

“In our opinion, it was necessary to call an attesting witness, alive and available in proof of the execution of the document in question but no objection was raised when it was produced and exhibited by the trial Court. It is significant that when Exhibit C was produced, the counsel for the plaintiffs made a statement on 29th June 1959 as follows:-

“I produce copies of sale deeds marked A and B (Objected). I also produce C, copy of sale deed.

* * * * *

It is noteworthy that although objection was taken to the production of the copies of sale deeds marked A & B but no objection was taken to the copy of the sale deed, Exhibit C. In these circumstances, the defendants cannot now be heard to say that the document was not properly proved. At any rate, even if Exhibit C is to be excluded from consideration, the *jamabandis* as also *khasra girdawaris* together with the other evidence clearly establish the purchase by the plaintiffs from Kuldip Singh.”

44. In this case, the appellants are admitting and were aware of execution of release deed in question by Prith Paul Singh, his father in favour of his brother respondent-plaintiff, as such, they cannot raise any objection qua the existence and due execution of the document as per the provisions of Section 68 of Evidence Act. It is a simple case where the appellant is in possession of the suit property as licensee and his plea that he has share in it as it was a joint Hindu family property was not proved and rightly discarded. Father of the parties had opted to give this property to his son respondent-plaintiff vide two release deed which are duly proved, rather admitted documents.

absolutely no substance or are supported by any evidence on record. It appears that appellant No.1, who was allowed to live in the house by his father as licensee, knowing fully well that the suit property now vests in his brother, wants to prolong his possession by keeping this litigation alive. It is evident that he had been raising fingers about the validity of release deed before Municipal Authorities but has never dared to challenge the same during the life time of his father. The reason was quite obvious. In case he had initiated any litigation against his father, he could not succeed as the father was fully supporting execution of the release deed in favour of respondent-plaintiff and proclaiming that the suit property is his self-acquired property.

46. In view of my above discussion, both the points No.(v) and (vi) are also decided against the appellants and in favour of respondent-plaintiff.

47. Consequently, perusal of the judgments of the Courts below, paper book, pleadings and documents which were made available by learned counsel for the parties during the course of arguments, indicate no legal or factual infirmities therein calling for any interference.

48. This appeal has no merits.

Dismissed.

October 27, 2016

Sachin M.

(SURINDER GUPTA)

JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No