IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.5649 of 2016 (O&M)
Date of decision:07.12.2016

Saroop Singh ... Appellant

Vs.

Kashmir Singh ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.S.Manhas, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant is aggrieved of the concurrent findings of facts and law, whereby, suit for mandatory injunction directing the appellant-defendant to vacate the premises after revocation of licence, has been decreed by both the Courts below.

Mr. R.S.Manhas, learned counsel for the appellant-defendant submits that a categoric stand in the written statement by setting up a counter claim was that licence had become irrevocable as the defendant along with other brothers had raised the construction of three houses on the plot measuring 8 marlas. The decree passed in similar civil suit instituted by the respondent-plaintiff against other brothers had attained finality, thus, there is gross illegality and perversity in the findings under challenge. The possession of the appellant-defendant had been long, continuous and un-

Savita
2016.12.12 10:26
I attest to the accuracy and
integrity of this document
High Court Chandigarh

interrupted and therefore, there was apparent *animus possidendi.* All these factors have not been taken into consideration by both the Courts below. In fact, the respondent-plaintiff had lost the right/title by efflux of time as per the provisions of Article 65 of the Limitation Act.

I have heard learned counsel for the appellant-defendant, appraised the judgments and decrees of the Courts below.

The judgment and decree passed in the similar civil suit aforementioned, was not part and parcel of the record of the Courts below, thus, there is no force in the aforementioned argument. Had the appellant been able to bring on record evidence qua construction through direct and cogent evidence, perhaps there had been some force in the argument of Mr.Manhas. In view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Ram Sarup Gupta(dead) by LRs vs. Bishun Narain Inter College and others 1987 AIR (SC) 1242,** licence had become irrevocable but the aforementioned evidence is lacking. The ingredients of adverse possession have also not been proved, i.e., date, month and year as no evidence in this regard has been led and rightly so, the Courts below had decreed the suit and suit for mandatory injunction would lie owing to breach of obligation, in view of the provisions of Section 39 of Specific Relief Act, 1963.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Savita
2016.12.12 10:26
I attest to the accuracy and
integrity of this document
High Court Chandigarh

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 07, 2016
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No

Savita
2016.12.12 10:26
I attest to the accuracy and
integrity of this document
High Court Chandigarh