

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

RSA No.5673 of 2016(O&M)
Date of decision :09.12.2016

Adarsh Kumar and another

.....Appellants

Versus

Vishwa Mittar(since deceased) through L.Rs.

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Sandeep K.Sharma, Advocate
for the appellants.

DARSHAN SINGH, J. (Oral)

This Regular Second Appeal has been preferred against the judgment and decree dated 05.04.2016 passed by the learned Additional District Judge, Jalandhar, whereby the appeal filed by the appellants-defendants against the judgment and decree dated 30.09.2015 passed by the learned Civil Judge (Sr. Division), Jalandhar, has been dismissed.

2. Deceased-plaintiff Vishwa Mittar filed the suit for mandatory injunction directing the appellants-defendants to vacate the portion shown in red colour in the site plan attached with the plaint being part of house no.103, Dilbag Nagar, Jalandhar and hand over the vacant possession thereof to the plaintiff.

3. As per the case of the plaintiff, appellant-defendant no.1 is his son and appellant-defendant no.2 is his daughter-in-law. It is pled that appellant-defendant no.1 did not serve him, rather he has been regularly

harassing the plaintiff. He did not contribute anything towards the expenses and raised the dispute from time to time. He had agreed vide writing dated 25.04.2007 to pay ₹ 1000/- per month to the plaintiff and also to pay ₹ 500/- per month for the costs of his medicines as well as to bear the half share of electricity and water bills. But, he never paid any such amount. It is further pleaded that the appellant-defendants were only in occupation of the disputed portion as licensee. He has revoked the license by serving the legal notice dated 15.06.2010 upon the appellants-defendants asking them to hand over the vacant possession of the suit property to him within 15 days, but of no avail. Hence the suit.

4. Appellants-defendants contested the suit on the grounds *inter alia* that the suit property is not the self acquired property of the plaintiff. They further pleaded that the present suit is a counter blast to civil suit titled as Adarsh Kumar Vs. Vishwa Mittar, decided by Civil Judge (Jr. Division), Jalandhar on 04.08.2010. It was further pleaded that the site plan attached with the plaint was not correct. They further pleaded that defendant no.1 had been giving ₹ 5000/- per month to the plaintiff and his wife as maintenance from the time when he was bachelor and after his marriage, he has paying ₹ 1500/- per month to them. They further pleaded that the plaintiff had earlier moved a false complaint against them to the S.S.P., which was found to be false. They denied that they are in possession of the suit property as licensee. With these pleas, they pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to relief of mandatory injunction, as prayed for?OPP
2. Whether the present suit is not maintainable in the present form? OPD
3. Whether the plaintiff has no *locus standi* to file the present suit?

- OPD
4. Whether the plaintiff has no cause of action to file the present suit?
OPD
 5. Whether the plaintiff has not come to the Court with clean hands and concealed the true and material facts from the Court?OPD
 6. Whether the suit is counter blast to the civil suit titled as Adarsh Kumar Vs. Vishwa Mittar decided by the Court of Smt. Rashi Sharma, on dated 04.08.2010?OPD
 7. Whether the property in question is not self acquired property of the plaintiff?OPD
 8. Relief.

6. On appreciation of the evidence and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit of the plaintiff for mandatory injunction directing the appellants to hand over the vacant possession of the suit property to the plaintiff within the period of two months of getting the certified copy of the decree, failing which the liberty was given to the plaintiff-respondent to obtain the vacant possession of the suit property through the process of the Court.

7. Aggrieved with the aforesaid judgment and decree dated 30.09.2015, the appellants-defendants preferred the appeal. The same has been dismissed by the learned Additional District Judge, Jalandhar, vide impugned judgment and decree dated 05.04.2016. Hence this Regular Second Appeal.

8. I have heard Mr. Sandeep K. Sharma, Advocate, learned counsel for the appellants and have carefully gone through the paper book.

9. Initiating the arguments, learned counsel for the appellants contended that the appellants were not in possession of the suit property as licensee. The suit property is also not self acquired property of the deceased-plaintiff. They also have a right to live in the suit property being the member of the family. Thus, he contended that the learned Courts below have wrongly passed the decree for mandatory injunction.

10. I have duly considered the aforesaid contentions.

11. This fact is not disputed that the appellant-defendant no.1 is the son and appellant-defendant no.2 is the daughter-in-law (wife of appellant-defendant no.1) of the deceased-plaintiff.

12. In order to establish that the plaintiff was the exclusive owner of the suit property, he has placed on file the certified copy of the sale deed Ex.P-1. The appellants-defendants cannot rebut the fact that the plaintiff has become the owner of the suit property by dint of the sale deed Ex.P-1. So, there is no escape from the conclusion that the house in question was the self acquired property of the plaintiff.

13. As already mentioned, appellant-defendant no.1 is the son and appellant-defendant no.2 is the daughter-in-law of the plaintiff. So, they were residing in the demised premises only in the capacity of a licensee being the son and daughter-in-law of the owner of the property. The defendants have failed to establish that they have any independent right to reside in the suit premises. The plaintiff-respondent has already been revoked the license by serving the legal notice Ex.P-3 dated 15.06.2010 calling upon the appellants to hand over the vacant possession of the demised premises to him. Thus, as the license of appellants-defendants has already revoked, the plaintiff was certainly entitled for the decree for mandatory injunction directing the appellants to hand over the vacant possession of the demised premises to him.

14. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

15. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

16. Therefore, the present appeal being devoid of merits, is hereby

dismissed with no orders as to costs.

09.12.2016

S.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No