

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

RSA No.6070 of 2014

Date of decision: 27.01.2016

Raj Kumari

... Appellant

Versus

Navdeep Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Malkeet Singh, Advocate
for the appellant.

Mr. V.K. Sandhir, Advocate
for the respondent.

AMOL RATTAN SINGH, J.

This is the second appeal filed by the plaintiff, after her suit seeking permanent injunction, restraining the respondent from interfering with her possession of double storeyed, LIG Flat No.600, in the Housing Board Colony, Sector-3, Ranjit Avenue, Amritsar, was dismissed by the learned Civil Judge (Jr. Divn.), Amritsar, on 01.11.2012 and the appeal filed by her was also dismissed by the learned Additional District Judge, vide his judgment and decree dated 21.05.2014.

2. The case set up by the appellant was that she had taken possession of the aforesaid flat from the respondent in the year 1993, on the

condition that the remaining installments to be paid in respect of the flat, to the Urban Development Authority, i.e. the agency which had allotted the flat to the respondent, would be paid by the appellant. It was further stated in the plaint that she had remained in continuous possession thereafter and had been paying the installments also, to the extent of Rs.1 lac, but no receipts were given by the respondent to her, despite her repeated requests.

She also spent Rs.1 lac on the renovation and repair of the flat. The defendant, it was averred, had assured her in the year 1993 itself that he would get the flat transferred in her name, but in violation of the oral contract between them, he got the conveyance deed from the Development Authority in his own name, after which he was threatening to dispossess her forcibly.

3. The respondent herein filed a written statement to the plaint and other than the preliminary objection of non-maintainability, he stated that he was the owner of the flat allotted to him by the Development Authority in the year 1989 and consequently, the conveyance deed had been duly executed and registered in his favour.

It was further stated that the appellant was on visiting terms with him and had been permitted to use the premises just as a licensee and subsequently she had agreed to stop the usage. In the month of July 2010, he had requested her to vacate the flat but instead she had filed the suit in August 2010 and continued to be in unauthorized and illegal possession thereafter.

The respondent also filed a counter claim for possession of the flat.

4. A replication was also filed by the appellant, in which other

than reiterating what she had stated in her plaint, the alleged request made by the respondent to her in the month of July 2010, to stop using the flat, was denied.

The learned Civil Judge framed the following issues in the suit and counter claim:-

“1) Whether the plaintiff is in possession of the suit property and if so, in what capacity?OPP

2) Whether the plaintiff is entitled to permanent injunction as prayed for? OPP

3) Whether the defendant/counter claimant is entitled to relief of possession as prayed for?OPD

4) Whether the defendant/counter claimant is entitled to the relief of possession as prayed for?OPD

5) Relief.”

5. The appellant-plaintiff examined one Mulakha Singh as PW-1, who filed his affidavit, corroborating the case set up in the suit.

PW-2 was one Vijay Kumar, shown to be a 'Senior TOA' in the BSNL, who produced records pertaining to the telephone number in the name of the appellant.

PW-3, Ravinder Singh, was a draftsman who proved the site plan of the property and its photographs.

Sanjeev Kumar, Inspector, Food and Supplies, Amritsar, appeared as PW4 and stated that he had no records pertaining to any ration card issued prior to February 2000. He also placed on record a letter dated 08.12.2011.

Subash Kumar, Record Keeper, State Bank of India, testified that he had brought the records pertaining to bank accounts in the name of the appellant and proved them on record.

The appellant herself appeared as PW-6 and essentially

repeated, in her affidavit, what she had stated in the plaint, further placing on record a compact disc, recording photographs of the property. She also produced copies of a receipt, domestic gas connection and ration card.

6. The respondent appeared as DW-1 himself and examined one Poonam Bala, Clerk in the Amritsar Development Authority, as DW-2.

The appellant also submitted an affidavit in respect of the stand taken by him in the written statement and deposed on the same lines. The allotment letter dated 30.03.1989 and “Intakalna” dated 05.10.2009, original receipts regarding payment of installments paid by him and a photograph of an entry regarding endorsement of registration of the flat in his name and the site plan of the flat, were the documents tendered by him in evidence.

Poonam Bala, the Clerk from the Amritsar Development Authority, deposed with regard to the flat being allotted to the respondent and proved the allotment letter and “Intkalnama”.

7. After considering the evidence before it, the learned Civil Judge came to the conclusion that the appellant had not been able to prove her title to the property in any manner, either by way of any documentary evidence, or even on the oral testimony of any witness.

The respondent, on the other hand, had proved the title of the property in his name by documentary as well as oral evidence. The trial Court also discussed in detail the claim of the appellant that she had made payment of installments by paying Rs.50,000/- twice to the respondent, on 27.01.2006 and 26.06.2009, but held that she could not prove such payment by way of any receipt, or by any testimony of a witness who actually saw such payment being made. It was also noticed in the judgment that she had

not informed her department/employer (though no details of such employer are given) with regard to her having purchased the property. She also did not produce any income tax return filed in that regard.

Thus, having considered the evidence, the learned Civil Judge dismissed the suit.

The counter claim of the respondent, for possession of the flat, was decreed in his favour, with a direction to the appellant to hand over vacant possession to the respondent within 60 days of the date of the decree.

8. The first appellate Court, in the appeal filed by the appellant, other than noticing the above reasons recorded by the learned Civil Judge and agreeing with them, further held that the argument on behalf of the appellant, that the license given to her to live in the flat had not been revoked by issuance of any notice by the respondent, was also an argument without any basis. Reference was made by the learned Additional District Judge to Section 61 of the Indian Easements Act, 1882, to hold that the licence would be deemed to have been revoked when the defendant filed the written statement and counter claim in the suit itself, and that there is no requirement of law that a notice must be issued for revocation of a licence.

Section 106 of the Transfer of Property Act, 1882, was also referred to, to hold that it had no applicability in the case of a licensee.

The counter claim filed by the respondent was held to be also maintainable, in terms of Order 8 Rule 6(A) of the Code of Civil Procedure.

Holding as above, the appeal filed by the present appellant, was also dismissed, by the first appellate Court.

9. Before this Court, Mr. Malkeet Singh, learned counsel for the

appellant, essentially reiterated the same arguments as had been raised before the Courts below and on a specific query by this Court, as to whether any receipt was issued by the Development Authority to the appellant, with regard to the installments allegedly paid by her, he submitted that no such receipts were available, as the receipts were also in the name of the respondent, in view of the fact that the flat had been allotted to him and before full and final payment, in any case it could not have been transferred.

Though no argument with regard to the Easements Act or the Transfer of Property Act was raised by the learned counsel for the appellant, obviously realizing the futility thereof, it is necessary to notice that as regards Section 106 of the Transfer of Property Act, it deals with the duration of leases, in the absence of a written contract. The suit property in any case not being on lease with the appellant, even as per the case set up by her, obviously, it was rightly held by the lower appellate Court that it had no applicability to the case of a licensee.

As regards Section 61 of the Indian Easements Act, 1882, it reads as follows:-

“61. Revocation express or implied.-The revocation of a license may be express or implied.

Illustrations:

(a) A, the owner of a field, grants a license to B, to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked.

(b) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked.”

Thus, even in the case of a licence, which admittedly is the user that was permitted to the appellant by the respondent, revocation thereof need not be by any notice issued and can be simply implied. Hence, with the simple denial of the respondent, to continue allowing the appellant

the user of the suit premises, the licence obviously stood revoked, with no further formality needed to complete that process.

10. As regards the appellants' production of documents before the trial Court, showing that she had a telephone connection and a gas connection issued in her name, possibly at the address of the flat in question, and that her ration-card was also issued showing the same address, none of these documents have been summoned by this Court, from the lower Court record, because the necessity of doing so is obviated by the fact that even accepting that all these documents show her address to be of the suit property, that does not convert her usage of the property to be more than that of a licensee. Thus, using the property, she possibly got the necessary domestic connections etc. issued in her name on that address. However, since in any case the respondent has never disputed that she was a licensee in the property, the factum of her having got her telephone connection, gas connection and ration-card issued showing the address of the suit property, does not entitle her to obtain an injunction against the respondent, from dispossessing her from the property, simply because she was a licensee using the premises.

11. Keeping in view the above, I find no merit in this appeal, which is consequently dismissed, with no order as to costs.

27.01.2016
vcgarg

(AMOL RATTAN SINGH)
JUDGE