

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

RSA No.6096 of 2014 (O&M)

Date of Decision.27.08.2016

Dev alias Deba s/o Sh. Dhuman

.....Appellant

Vs.

Brij Bhupinder Singh

.....Respondent

Present: Mr. D.K. Bhatti, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

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AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby after revocation of the licence vide legal notice dated 20.04.2009, suit for mandatory injunction instituted on 15.06.2009 calling upon him to deliver the vacant possession of suit property, has been decreed and the appeal against the same, has also been dismissed.

Mr. D.K. Bhatti, learned counsel appearing for the appellant-defendant submits that the appellant had admitted the receipt of the notice but the suit as such i.e. for mandatory injunction was not maintainable. It should have been suit for possession by affixing the court fee. In the earlier round of litigation i.e. Civil Suit No.366 of 1999, Ex.D3, at the instance of the defendant against the plaintiff, it was held that the defendant shall not be dispossessed. Once the matter had already been settled in the year 1999, present suit filed in the year 2009 was not maintainable, thus, urges this Court for formulation of the substantial questions of law as drawn in the

memorandum of appeal.

I have heard learned counsel for the appellant and appraised the paper book. Section 39 of the Specific Relief Act, 1963 deals with the proposition that when there is breach of obligation, legal notice dated 20.04.2009 calling upon the appellant-defendant was to vacate the premises as he was in permissive possession. In the permissive possession, licensee is in obligation to hand over the possession as and when asked for. In my view, the suit for mandatory injunction was/is maintainable and this fact has also already been held by various Courts including the judgment of Hon'ble Supreme Court in *Sant Lal Jain Vs. Avtar Singh 1985 AIR SC 857* and *TH. Milkha Singh and others Vs. TH. Diana and others 1964 AIR J&K 99*. The appellant had not been able to prove on record the material with regard to alleged construction in order to make the licence irrevocable. The previous round of litigation was only an injunction qua forcible interference in possession.

For the foregoing reasons, I am of the view that there is no illegality and perversity in the judgments and decrees passed by the Courts below as the same are based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration in the second appeal. No ground for interference is made.

The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 27, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No