

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

RSA No.3144 of 2014

Date of Decision: 21.04.2017

Sukhwinder Kaur

...Appellant

Vs.

Gurdeep Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. K. S. Boparai, Advocate,
for the appellant.

Ms. Promila Nain, Advocate,
for the respondents.

Amol Rattan Singh, J.

This is the second appeal of the plaintiff who had filed a suit seeking a decree of permanent injunction, restraining the three defendants (respondents-herein) and their agents etc. from interfering in her possession of the suit property, which is stated to be a house, fully described in the plaint. At the outset, it is necessary to notice that the plaintiff is the sister of respondents-defendants no.1 and 2, with respondent-defendant no.3 being the wife of the first respondent-defendant.

2. As per the suit of the plaintiff, the father of the parties, i.e. Harbant Singh, died on 30.05.1998. Their mother, Nasib Kaur died 10 years earlier, on 22.04.1988.

The plaintiff was earlier married to one Parminder Singh on 12.06.1987 and was blessed with a daughter, Vipanjit Kaur on 06.08.1988.

As per the plaint, the plaintiffs' husband used to maltreat her and ultimately threw her out of the matrimonial home, after which she was residing in her fathers' house alongwith her daughter.

A petition under Section 125 Cr. P.C. having been instituted by her against her husband, it is stated to have been decided on 16.05.1988 and thereafter, her husband, Parminder Singh is stated to have filed a petition seeking divorce under Section 13 of the Hindu marriage Act, 1955, which was subsequently converted to one under Section 13-B of the said Act and was finally decided on 01.03.2006.

3. In the aforesaid background, it was further contended that the appellant-plaintiff was residing in her fathers' house since 1994 and was in possession of two rooms which she was using as “a common user”.

It was further contended that she was one of the legal heirs of her father but the defendants, with a malafide intention, wanted to dispossess her from the suit property and had been threatening her and causing problems for her since long.

Since they threatened to dispossess her, as per the contention made, the suit came to be instituted on 09.10.2007.

4. Upon notice issued to them, the defendants appeared and filed a common written statement, taking a preliminary objection that the suit had been filed with an intention to grab the property of defendant no.1, bearing khasra no.1361 which was in the sole possession of defendants no.1 and 2.

It is further contended that the plaintiff had no concern with the property and as such, the suit was not maintainable, with the plaintiff living in the property with the permission of the defendants.

Yet further, as per the defendants, the plaintiff and the other

sisters of defendants no.1 and 2 had been given their due share of the property by their parents and the plaintiff and the other sisters had sold the said shares, which fact was concealed by the plaintiff.

Still further, it was contended that, in fact, the plaintiff was a quarrelsome lady who had strained relations with her-in-laws and eventually obtained a divorce from her husband by causing cruelty to him and her-in-laws.

On merits, again it was contended that the plaintiff was living in the suit property with the permission of the defendants but she had otherwise no right to it. However, it was denied that she had been threatened to be dispossessed forcibly therefrom.

5. A replication having been filed by the plaintiff, the following issues were framed by the learned Civil Judge (Junior Division), Ludhiana:-

- “1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
2. Whether suit is not maintainable in the present form? OPD
3. Whether the plaintiff has not got no cause of action to file the present suit? OPD
4. Relief.”

6. By way of evidence, the plaintiff examined herself as PW1, whereas the defendants examined one Gurnam Singh as DW1. Defendant no.1, Gurdeep Singh, examined himself as DW2.

By way of documentary evidence, the plaintiff relied upon the death certificate of her father, the order in the petition filed under Section 125 Cr.P.C., the order in the divorce petition, a site plan, ration card and her passport, as also a call letter for an interview, and her voter identity card, to

show that she was in possession of the suit property.

7. Having considered the aforesaid evidence, the learned Civil Judge recorded a finding that with the possession of the plaintiff on the suit property not denied by the defendants in any case, there was no need of further proof of such possession.

8. It was further noticed by that Court that the plaintiff, while admitting that the property stands in the name of her brothers, had further stated that it was ancestral property and she was claiming her share in the house on that basis. However, the suit only being one seeking permanent injunction, obviously, no decree to that effect could be passed.

9. As regards the plaintiffs' contention that she was being dispossessed from the property, even while noticing the testimony of the witnesses for the defendants, to the effect that the plaintiff had been living in the house and causing a nuisance, the learned Civil Judge held that there was no instance shown by the plaintiff that she was actually being dispossessed therefrom. It was further noticed that even as per her own pleadings, the defendants had given her shelter in her hour of need.

10. Observing as above, the primary issue was decided against the plaintiff, with the issues of maintainability of the suit and there being no cause of action, also decided against her on the ground that there being no attempt to dispossess her, in fact, the institution of the suit was misplaced.

Consequently, the suit was dismissed.

11. The plaintiff having filed a first appeal before the learned Additional District Judge, that Court recorded a finding that admittedly, the status of the plaintiff is that of a divorcee, and after her divorce, she started living with her daughter in the house in question, with permission granted

to her by her brothers.

Thereafter, going on to discuss as to what constituted a licence as per Section 52 of the Indian Easements Act, 1882, it was held by that Court that a licence only makes an action lawful, which otherwise would be unlawful, but such lawful action also does not transfer any interest in respect of the property in favour of the licensee.

It was further held that it was not the case of the appellant that her brothers had given her exclusive possession of the house, but in fact, she had started residing there after the decree of divorce was granted to her. As such, it was a good will gesture on the part of her brothers to adjust the appellant for the time being.

Further going on to hold that admittedly she was not a tenant in the house, and therefore not being in exclusive possession thereof, it was observed that she could only be termed to be a licensee, as she was staying in the house as per permission granted to her by her brothers.

12. After having recorded as aforesaid, the first appellate Court also observed that the appellant-plaintiff may be entitled to the property as the legal heir of her father, but the suit being simply one seeking permanent injunction, even if that Court were to presume that she is a co-owner, no suit seeking permanent injunction would be maintainable against another co-owner, with her brothers, i.e. defendants no.1 and 2, also being co-owners.

13. Another argument raised before that Court was also noticed, to the effect that it was contended on behalf of the respondents-defendants that the suit property had been inherited by them on the basis of a registered will. That argument, however, was rejected, it not being a part of the pleadings.

14. Even so, it was held since the appellant-plaintiff was staying in

the suit property after her divorce, with the permission of the respondents-defendants, she was mere a licensee and after revocation of the licence, she could have no right to seek injunction against the licensor.

On the aforesaid findings, the first appeal filed by the appellant-plaintiff was also dismissed.

15. Before this Court, Mr. K. S. Boparai, learned counsel for the appellant, has raised the following questions of law, to be adjudicated upon:-

- “i) Whether the suit of the plaintiff deserves to be decreed on the basis of admissions made by the defendants in pleadings and evidence which are binding upon them under section 17 of the Evidence Act?
- ii) Whether the defendants are not entitled to dispossess the plaintiff forcibly and illegally from the suit house which is in her settled possession since 1994 being one of the heirs of last owner Harbant Singh?
- iii) Whether the plaintiff being a co-sharer can be dispossessed by the other co-sharers by force till the suit property is partitioned as per full Bench judgment of this hon'ble Court in case of Bhartu v. Ram Sarup reported in 1981 PLJ 204?
- iv) Whether the respondents/defendants are estopped by their act and conduct from dispossessing the appellant/plaintiff from the suit house except in due course of law?
- v) Whether the courts below have committed perversity and illegality while not considering the material evidence adduced by the plaintiff on record?”

As a matter of fact, the question of law raised at clause (iii) hereinabove, is not a question which would arise in this *lis*, because whether or not the plaintiff and the defendants or any of them, are co-sharers in the suit property, is something which could only have been determined in a suit

seeking declaration of such ownership and title, with the suit in the present *lis* being only one seeking permanent injunction.

16. Addressing arguments, Mr. Boparai submitted that, firstly, the learned Civil Judge though was not incorrect in holding that a declaration could not be issued, as regards the ownership of the suit property, it only being a suit for permanent injunction, however, thereafter that Court wholly mis-appreciated the fact that it was because the appellant-plaintiff was being troubled by the defendants and being asked to vacate the suit property, that she had to seek relief from the Court to get an injunction against forcible eviction.

Learned counsel submitted that therefore, even while holding that no declaration could be issued, the trial Court should actually have issued a decree of permanent injunction against the respondents-defendants.

Mr. Boparai further submitted that as regards the first appellate court, it went to on record a finding which was wholly uncalled for, to the effect that the appellant was only a licensee in the premises, without any evidence led with regard to the title of the parties in the suit property, it admittedly being the property of the father of the appellant-plaintiff and the first two respondents-defendants.

Hence, he submitted that the appellant being a divorced lady living with her daughter, she is being forced out of her fathers' property, completely against all provisions of law.

17. Ms. Promila Nain, learned counsel appearing for the respondents-defendants, submitted that as regards the court of the learned Civil Judge, it correctly found that there was no immediate threat to the appellant of being dispossessed from the property, with there not having been any complaint with

regard thereto and as such, the suit was correctly considered to be not maintainable and was therefore dismissed.

As regards the finding of the lower appellate Court, Ms. Nain submitted that the finding of that Court that the appellant-plaintiff was only a licensee in the suit property is not an erroneous finding on any count, in view of the fact that admittedly the appellant came and started living in the house already in the occupation of the respondents, upon her and her husband having divorced each other. Therefore, with a daughter coming back to her brothers' home, she can at best be treated to be living there with the consent of her brothers and their families, and she cannot be treated to be the owner of the property. Consequently, neither being owner nor a tenant, she can at best be a licensee, as has been correctly held by the first appellate Court. Thus, once the licence is revoked either by issuing notice to that effect, or even by the conduct of the licensor in not allowing the licensee to further use the property, the licence stands revoked and the licensee loses the right to remain in the property and as such, no decree of permanent injunction can be issued against the licensor.

18. Thereafter, learned counsel for the respondent-defendant referred to an application filed by the appellant (Civil Miscellaneous No.14568-2015), wherein the orders of this Court dated 24.03.2015 and 11.08.2015 have been referred to, with a prayer that the order dated 11.08.2015 be recalled, by which the interim injunction granted on 24.03.2015 was vacated.

Ms. Nain submitted that vide an order dated 27.04.2015, the respondents had been restrained from disconnecting the electricity and water-supply of the premises, upon the appellant obviously simply taking advantage to sling mud at the respondents, by submitting vide the aforesaid application,

filed on 28.08.2011, to say that she and her daughter were living without electricity and water.

Ms. Nain thereafter referred to the reply filed thereto by the respondents-defendants, stating therein that the appellant is actually not residing in the house in dispute and she is residing in the village itself on rent and that as far as the disconnection of the water and electricity connections is concerned, there is no water and electricity connection in the room which was allegedly in possession of the appellant, and even in the police reports on the basis of the enquiry conducted on the directions of the Human Rights Commission, Punjab, it was admitted that the electricity connection had already been disconnected and it is only after the interim orders passed by this Court, that the appellant had been trying to get the electricity and water connections restored, which actually stood disconnected as far back as in 2007.

In this regard, she referred a report of the Deputy Superintendent of Police, Dakha, dated 10.10.2012, addressed to the Senior Superintendent of Police, Ludhiana (Rural), which has been annexed as Annexure R-1 with the reply of the respondents-defendants to CM. No.14568/2015.

In the said report, it was stated that the complainant before the police, i.e. the present appellant, had, after making a complaint that she was being forcibly dispossessed from the house, not joined investigation, though the DSP stated that the situation was being watched to avoid breach of peace.

She further referred to that part of the other report (Annexure R-2), dated 20.12.2012, where the DSP has reported that the brothers of the appellant, had already disconnected the water-supply and electricity connection and that a civil suit was pending and that after the civil suit, the

present appeal is pending before this Court, wherein status quo has been ordered.

19. In rebuttal to the aforesaid contention, Mr. Boparai, learned counsel for the appellant, submitted that even the dismissal of the application filed by the appellant (CM No.14568 of 2015) vide this Courts' order dated 03.03.2016, eventually has no effect on the merits of the appeal itself, because firstly, in the appeal, status quo had been ordered by this Court vide an order dated 28.10.2014, and even if that order stood vacated on 11.08.2015, (though actually that order vacated the subsequent order dated 27.04.2015, by which the respondents were restrained from disconnecting the electricity and water supply to the premises), however, eventually, the appeal has to be decided on its own merits, considering the status of the appellant at the time when the suit was filed.

20. Having considered the aforesaid arguments, I am in agreement with learned counsel for the appellant, to the effect that even in a suit seeking permanent injunction against the respondents-defendants, the status of the parties in the suit property was to be seen at the time when the suit was instituted on 09.10.2007.

It needs specific notice again, that in the judgment of the learned Civil Judge, a specific finding has been recorded in reference to the testimony of respondent-defendant no.1, when he deposed as DW2, to the following effect:-

“He admitted that plaintiff is living in the house in dispute since 1994 and is causing nuisance. In cross-examination, he was asked that has he brought anything to show the share of plaintiff but he refused.”

Thus, very obviously the appellant-plaintiff was in possession of

the suit property even during the pendency of the suit in the Court of learned Civil Judge. On the basis of the above, that Court recorded as follows:-

“After considering the pleading of plaintiff, her evidence and cross-examination of DWs, this Court has found that she could not prove even a single instance when she was illegally tried to be dispossessed from suit house rather her own pleadings as well as evidence is supporting the version of defendants that they have given her shelter in the hour of need. No witness has come in support of her case that in his/her presence, plaintiff was tried to be dispossessed. If she wants that she given share in her ancestral property, then suit for permanent injunction is not proper remedy. Her possession has not been denied by facts not denied need not to be proved. What she was bound to prove is that she has been tried to be forcibly dispossessed from suit house but she has failed to prove any such instance hence she has failed to prove this issue. Thus, it stands decided against plaintiff.”

21. Hence, the dismissal of the suit by the learned Civil Judge was not on account of the fact that the appellant was not in possession of the suit property, but quite to the contrary; i.e. because it was held that though she is admittedly in possession thereof even as per the respondents-defendants, however, since there was no threat to her being dispossessed, therefore, the suit was not maintainable.

In the opinion of this Court, the learned Civil Judge wholly mis-appreciated the situation as regards the issue of permanent injunction, though that Court correctly held that the issue of the rights of the parties in the suit property as regards its ownership and title, were not required to be gone into in a suit that did not seek any declaration with regard to such rights.

However, with the appellant-plaintiff specifically having been found in possession of the suit property, the decree that should have been

passed, should have been in favour of the appellant, to the effect that the respondents-defendants are restrained from dispossessing her from the suit property, except by due procedure of law.

22. Thereafter, the learned first appellate Court also recorded a wholly erroneous finding to the effect that the appellant is only a licensee in the property, with no issue framed whatsoever with regard to the question of ownership and title in the suit property. No doubt, as already stated hereinabove, in a suit for permanent injunction actually the title was not required to be gone into and only possession of the plaintiff was to be seen, but if the respondents-defendants claimed title to the property, and took a specific plea that the plaintiff was only a licensee therein, then their exclusive title thereto was required to be proved by them, before the Court could arrive at a conclusion that the plaintiff was only a licensee and therefore not entitled to a decree of permanent injunction, even in her fathers' house, against the defendants.

23. As a matter of fact, the lower appellate Court also actually recorded no firm finding as to the real status of the parties in the suit property. It first held the appellant to be a licensee and thereafter also observed that even if she was a co-sharer, no injunction can be granted in her favour against another co-sharer, with the first two defendants, being her brothers, in any case also entitled to the property of their father.

That court, even while observing to the effect that even if the appellant is a co-sharer she is not entitled to a decree of permanent injunction against other co-sharers, still held her to be a licensee.

To repeat, such a finding could not have been given unless the respondents-defendants had led evidence to prove that they were the sole

owners of the property and the appellant only their licensee, even being their sister.

24. On the other hand, if the lower appellate Court actually had recorded that she is a co-sharer on the basis of a finding of title of the property as per evidence led (which was not led as specifically observed by the Civil Judge), even then, the principle of no decree of permanent injunction being available against a co-sharer, would not apply in the circumstances of the case. This is so, because if the appellant, being admittedly in possession of a part of the suit property, was eventually found to be a co-sharer, she was still entitled to a decree of permanent injunction against other co-sharers who were forcibly trying to dispossess her. Of course, if the finding had been that though she is a co-sharer but not in possession, then a decree of permanent injunction may not have been granted against other co-sharers, but such possession of the appellant-plaintiff having been admitted in the testimony of defendant no.1 himself, very obviously she could not be dispossessed forcibly by them, and was therefore entitled to a decree of permanent injunction.

Thus, the questions of law framed at clauses no.(i), (ii), (iv) and (v) are answered in favour of the appellant-plaintiff, to the effect that being a person admitted even by the defendants to have been in possession of the suit property at the time of the filing of the suit, since 1994, she could not have been dispossessed therefrom except in the due course of law. She was, therefore, entitled to a decree of permanent injunction to that effect, against the defendants and as such, the Courts below have wholly erred in dismissing her suit and first appeal.

As already stated earlier, the question of law framed at clause (iii), would not arise in a suit seeking permanent injunction, where the

ownership and title to the suit property qua the parties to the *lis*, has not earlier been determined.

25. Consequently, in view of what has been held hereinabove, the judgments and decrees of the Courts below are wholly unsustainable and are therefore set aside and a decree is issued against the respondents-defendants, permanently injunctioning them from dispossessing the appellant-plaintiff from the suit property, except in due course of law.

It is, however, clarified that nothing observed by this Court hereinabove shall be taken to be any opinion of this Court on the ownership rights of either of the parties to the suit property, which would be gone into by the competent Court, if any such proceedings in respect thereof are brought before it by either party.

The appeal is consequently allowed, with costs of Rs.10,000/-.

A decree sheet be drawn up accordingly.

April 21, 2017

dinesh/vcgarg

**(AMOL RATTAN SINGH)
JUDGE**

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes