

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4094 of 2017 (O&M)
Date of decision: 31.08.2017

Ashok

... Appellant

Vs.

Laxmi Devi

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Surender Saini, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendant is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for mandatory injunction was decreed by the learned trial Court vide its impugned judgment and decree dated 06.03.2017 and his first appeal also came to be dismissed by the learned Additional District Judge vide his impugned judgment and decree dated 28.07.2017, upholding the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in paras 2 and 3 of the impugned judgment, are that respondent/plaintiff Smt Laxmi devi filed a suit against the defendant Ashok for Mandatory Injunction that plaintiff was absolute owner to the extent of ½ share of the suit property as shown by letters "ABCDEF" in the site plan, having three rooms, one kitchen,

varandah and one shop situated at Shankar colony, old DC road, Sonapat. The property was received by the plaintiff vide civil court decree passed in a civil suit No.868 of 2008 titled as Laxmi Devi Vs. Kanwar Bhan decided on 18.12.2008. It was pleaded that the said decree was challenged by Kanwar Bhan in civil suit titled as Kanwar Bhan Vs. Laxmi Devi, but the plaint of the abovesaid suit was rejected under Order 7 Rule 11 CPC vide order dated 21.05.2010 passed by the Court of Sh. Phalit Sharma, the then learned ACJ (SD), Sonapat, against which an appeal was also dismissed with costs by the Court of Mss Vivek Bharti, the then learned ADJ, Sonapat vide order dated 31.03.2011.

The plaintiff met with an accident due to which she was operated upon and had to remain admitted in Hospital. At that time, the property in question, except shop, was entrusted to the defendant as a care taker in the absence of plaintiff to look after the same. On return, when the plaintiff asked the defendant to vacate the same, the defendant unauthorizedly and without any right refused to hand over the possession of the said portion of the house. Thereafter, plaintiff served a legal notice through his counsel on 06.10.2012, requesting the defendant to hand over the vacant possession, but neither the defendant handed over the vacant possession nor he replied to the said legal notice till date.

Defendant was put to notice. He appeared and filed his contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled for the relief of mandatory injunction ordering the defendant to restore the possession of the

house property shown by letters “ABCDEF” in the attached site plan except the shop which is already in possession of the plaintiff? OPP

2. Whether the 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 not come to the court with clean hands?
OPD
5. Relief.

In order to prove their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has duly proved her pleaded case by bringing on record her documentary as well as oral evidence. Accordingly, suit for mandatory injunction filed by the plaintiff was decreed by the learned trial Court vide its impugned judgment and decree dated 06.03.2017. Defendant felt aggrieved and filed his first appeal, which was dismissed by the learned Additional District Judge vide impugned his judgment and decree dated 28.07.2017. Hence this regular second appeal at the hands of unsuccessful defendant.

Heard learned counsel for the appellant.

The case of the plaintiff-respondent was based on earlier judgment and decree dated 18.12.2008 Ex.P3, whereby Sh. Kanwar Bhan, father of the plaintiff suffered a decree in favour of his daughter. Plaintiff is the daughter of late Sh. Kanwar Bhan, whereas defendant-appellant is the son of late Sh.

Kanwar Bhan, thus, the plaintiff and defendant are brother and sister. It is also a matter of record that the decree dated 18.12.2008 Ex.P3 suffered by late Sh. Kanwar Bhan in favour of his daughter Smt. Laxmi Devi-plaintiff has not been set aside so far by any Court of competent jurisdiction.

Once the decree dated 18.12.2008 Ex.P3 is intact as on date, status of the defendant-appellant cannot be said to be more than of a licensee. Said licence stood revoked at the hands of the plaintiff, while issuing notice Ex.PW4/A. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at its judicious conclusion, learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned Additional District Judge in paras 12 to 16 of the impugned judgment, which deserve to be noticed here, read as under: -

“Admittedly, the defendant is in possession of the disputed house. The plaintiff alleged that she having met with an accident required medical treatment at Delhi and had given the property to the defendant to look after as licensee whereas the defendant claimed possession over the suit property from the time of his father.

It was submitted by ld. counsel for the defendant that suit for mandatory injunction would not be maintainable and the plaintiff should have filed the suit for possession as he is allegedly in unauthorized possession of the house. The contention is devoid of

merit. The appellant Ashok, in his cross-examination admitted that even prior to the decree, they and their father used to reside in the house. As the house was admittedly owned by Kanwar Bhan, father of the parties, status of defendant Ashok at that time was also not more than that of a licensee. Ownership of the house was transferred to the plaintiff Luxmi Devi vide judgment and decree dated 18.12.2008 So status of the defendant Ashok even if his possession is taken from an earlier date than alleged, continued as licensee only but under the plaintiff Luxmi.

It is relevant to point out that defendant Ashok in his cross-examination stated that the disputed house was partitioned in the year 1987 between the brothers and his parents. At another place, he stated that nothing fell to the share of his parents as everything belonged to them. This stand does not help the defendant being without pleading. Moreover, it was his duty to specify as to which portion fell to whose share. But it has not been disclosed. Be that as it may, fact remains that Kanwar Bhan was admitted owner of the house and after him plaintiff become its owner by way of judgment and decree dated 18.12.2007 and status of appellant/defendant Ashok at no point of time was more than of a licensee. The plaintiff received right of licensor from the father. Licensee is none other than real brother of the plaintiff. License stood revoked vide notice Ex PW4/A and then by filing of this suit. In Ashwinder Singh and another vs Bhagwant Singh and another 2014 (4) CCC 183, it was held that where son is allowed to reside in the house,

such right is of licensee and the license is terminable at the will of licensor.

Keeping in view the facts and circumstances and relationship between the parties a suit for mandatory injunction is sufficient. Reference can be made of Sanjeev Kapoor and another vs Anil Kumar 2016 (2) LJR 164. Thus, the learned Lower court has rightly decreed the suit of the plaintiff directing the defendant to restore the possession of the house in dispute to the plaintiff Luxmi Devi.

During the course of arguments learned counsel for the defendant referred to Hatti Singh and another vs Rakesh Kumar and others 2011 (4) LJR 548, to submit that judgment and decree obtained by fraud is nullity and can be challenged in any court, even in collateral proceedings. After referring to Darbara Singh vs Tara Chand 2009 (2) RCR (civil) 767 and Sher Singh and another vs Siri Krishn and others 2011 (2) LJR 6, it was submitted that in the family settlement all the members should be party to it and it must be bonafide to resolve family dispute of the parties, which is not the case here. Decree dated 18.12.2008 was allegedly passed on the basis of family settlement but the defendant and other family members were not party to it. So the decree is nullity. There is no dispute as to these authorities, but these authorities are not applicable to the facts of the present case. The judgment and decree dated 18.12.2008 has even been unsuccessfully challenged even by Kanwar Bhan. The decree stands as it is till date, so the

plaintiff cannot take any benefit of these authorities. There is no illegality or infirmity in the judgment and decree passed by the learned Lower court and findings of learned lower court are affirmed.”

When confronted with the abovesaid cogent and convincing findings recorded by the learned first appellate Court to point out any illegality therein, learned counsel for the appellant had no answer and rightly so, it being a matter of record. Under these undisputed circumstances of the case, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also failed to raise any question of law, much less substantial question of law, which is sine qua non for entertaining any regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality has been found in either of the impugned judgments and decrees passed by the learned Courts below, the same deserve to be upheld.

Present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

31.08.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No