

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 468 of 2007 (O&M)
Date of Decision: 30.1.2017

Ashwani Kumar

.....Appellant

Versus

Chaman Lal

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sarvpreet S. Gurna, Advocate
for the appellant.

ANITA CHAUDHRY, J

CM-1024-C-2017

Application is allowed for the reasons stated therein.

Delay of 3 days in filing the appeal is condoned.

RSA-468-2017 (O&M)

This is the defendant's second appeal aggrieved by the judgments passed by both the Courts below.

It would be necessary to advert to the facts. Unfortunately the litigation is between the father and son. The father who was 80 years old had instituted a suit in November 2013 seeking mandatory injunction and for directions to the son to vacate the house. It was claimed that the plaintiff had purchased the property in 1970 and he had allowed the defendant, his wife and children to stay in the house about 20 years ago and he was a licensee. It was averred that the defendant and his wife started misbehaving and tried to grab the property. The plaintiff got a public notice issued

disowning the defendant and his family. He requested his son to vacate the property but he refused and made an attempt to raise illegal construction and had collected building material. The plaintiff sent legal notice revoking the licence and thereafter filed the suit.

The suit was contested by the defendant and he asserted that he was on rent and he had constructed a room and kitchen from his own expenses and due to the financial constraints he could not pay the rent on time and an attempt to forcefully dispossess him was made by the plaintiff with the assistance of some persons who came to the house in a car. It was submitted that the police was also informed and proceedings under Section 107/151 Cr.P.C. were initiated.

After a complete trial, the lower Court repelled the contentions made by the defendant that he was a tenant and held the defendant to be a licensee and found that the license had been revoked. Therefore, the suit was decreed and direction was given to the defendant to hand over the vacant possession to his father. He was also restrained from raising any construction without the consent of his father.

Aggrieved by the judgment, an appeal was preferred by the defendant which was dismissed on 26.9.2016.

I have heard the counsel for the appellant and have gone through the judgments of both the Courts below.

It is unfortunate that though the respondent (father) after having established his ownership is being denied the right to enjoy the fruits of the decree passed in his favour. The ownership admittedly rests with the father and the property had been purchased by him and a categorical finding had been recorded by the Courts below. The father has been constrained to

knock the doors of the Court to obtain the possession of his own property. The plea set-up by the son that he was a tenant had been rejected and rightly so. The appellant could not produce any evidence to show that the relationship of landlord and tenant existed between them. The appellant is taking advantage of his permissive possession thereby defeating the valuable right of the father over his property. The father is a senior citizen in his 84th year who is yet to get back possession. The appellant has no right in law or equity in his favour.

I find no infirmity in the findings recorded by the Courts below. In my considered view, there is no substantial question of law arising for consideration in the second appeal.

Before parting, it is necessary to state that the litigation should have been avoided. The son has taken a unrighteous stand in preferring this appeal and has dragged his father to another round of litigation instead of being graceful and vacating the house.

The appeal is bereft of merit and is dismissed.

(ANITA CHAUDHRY)
JUDGE

January 30, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No