

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 105 (2 cases)

1. RSA-4939-2017 (O&M)
Decided on : 25.10.2017

Jatinder Singh Appellant

VERSUS

Balbir Kaur and another Respondents

2. RSA-4944-2017 (O&M)

Jatinder Singh Appellant

VERSUS

Balbir Kaur and another Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Chetan Bansal, Advocate,for the appellant.

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DEEPAK SIBAL, J. (ORAL)

CM-12988-C-2017

Through this application, condonation of the delay of 12 days in filing of the present appeal is sought for.

After going through the contents of the application and hearing learned counsel for the applicant/appellant, the application is allowed and the delay of 12 days in filing of the present appeal is condoned.

CM-12989-C-2017

Through this application, condonation of the delay of 111 days in re-filing of the present appeal is sought for.

After going through the contents of the application and hearing learned counsel for the applicant/appellant, the application is allowed and the delay of 111 days in re-filing of the present appeal is condoned.

RSA-4939-2017 (O&M)

Respondent No.1, at the age of seventy years, had filed a suit before the Trial Court against her son, who is the appellant herein, seeking therein relief of mandatory injunction and in the alternative possession of the premises shown in the site plan attached to the plaint forming part of House No.3965/31 (Old) and New No.8681 (Plot No.68-69), situated in Gali No.3, Kot Baba Deep Singh, Amritsar (for short “the suit property”). Permanent injunction to restrain the appellant and his wife-respondent No.2 from getting an electric connection installed in their names in the suit property from the Electricity Department as also to restrain them from damaging the suit property was also sought.

The case set up by respondent No.1 before the Trial Court was that she was the owner of the suit property having purchased the same through a registered sale deed dated 07.04.1989 from one Ajit Singh. The appellant and respondent No.2 being her son and daughter-in-law respectively had been permitted to occupy the suit property. However, due to the bad behaviour of the appellant as also respondent No.2 initially the appellant was disinherited by the appellant's father and later by respondent No.1 as well. Repeated pleas by respondent No.1 to the appellant as also respondent No.2 to vacate the suit property having not been acceded to left respondent No.1 with no other alternative but to file the afore-referred suit.

On being put to notice the appellant as also respondent No.2 submitted before the Trial Court that the suit filed by respondent No.1 was not maintainable. On merits, it was pleaded that the suit property was ancestral and thus the appellant had a right to occupy the same as a co-owner. The appellant and respondent No.2 also filed a counter-claim seeking the relief of permanent injunction to restrain respondent No.1 as also her other son namely Bhupender Singh from disconnecting the electricity connection which was in the name of the

appellant.

The Trial Court decreed the suit filed by respondent No.1 and dismissed the counter-claim filed by the appellant and respondent No.2. The appeals filed by the appellant were dismissed by the Appellate Court, giving a cause to the appellant to prefer the present second appeals being RSA-4939-2017 and RSA-4944-2017. Since the facts and the issues of law in both the appeals are inter-connected, the present judgment would decide both the appeals.

Learned counsel for the appellant submits that the suit filed by respondent No.1 for mandatory injunction did not lie especially when the same had been filed after several years of disinheritance of the appellant. In support of his argument, a judgment of the Apex Court in “*Joseph Severance and others vs. Benny Mathew and others*” 2005(7) SCC 667 was cited. On merits, it was submitted that the suit property was ancestral and therefore the status of the appellant while occupying the same was not of that of a licensee but that of a co-owner as admittedly the appellant was the son of respondent No.1.

Both the Trial Court as also the Appellate Court have concurrently found respondent No.1 to be the exclusive owner of the suit property. The challenge to her ownership has not been made before this Court. Both the Trial Court as also the Appellate Court have further concurrently found that no evidence whatsoever was led by the appellant to show that the suit property had been purchased out of the ancestral funds or that he in any manner had contributed in the purchase of the same. Nothing in this regard has even been pointed out before this Court.

A perusal of the plaint shows that respondent No.1 had filed a suit for permanent injunction and in the alternative a suit for possession alongwith permanent injunction seeking vacation of the suit property which was stated to be in the occupation of the appellant and respondent No.2 as licensees who after

consistent requests had refused to vacate the same. It was the specifically pleaded case of respondent No.1 that after her husband and she had disinherited the appellant she had consistently made requests to the appellant and respondent No.2 to vacate the suit property. However, the appellant and respondent No.2 had failed to pay any heed to such requests and with utter adamance and impunity continued to occupy the suit property apparently taking benefit of the relationship between themselves and respondent No.1. However, when the appellant as also respondent No.2 started to threaten respondent No.1 who at the time of filing of the suit is stated to be seventy years old as also when appellant No.1 with aggression sought to establish his legal possession over the suit property by applying to the Electricity Department for an electric connection to be installed in the suit property in his own name, respondent No.1 filed the instant suit for mandatory injunction or in the alternative for possession of the suit property and for permanent injunction to restrain the appellant from applying for an electric connection to the Electricity Department in his name.

In view of the above facts which are found peculiar to the present case, the suit for mandatory injunction or in the alternative for possession filed by respondent No.1 was maintainable. The appellant and respondent No.2, who were licensees, continued to occupy the suit property even after the revocation of their licences and repeated requests made by respondent No.1 asking them to vacate the suit property. It is apparent that after his disinheritance firstly by his father and then by respondent No.1, the appellant, with utter adamance and impunity continued to occupy the suit property apparently taking benefit of the relationship between himself and respondent No.1 but more recently when the appellant aggressively sought to legalize his possession over the suit property by applying for an electric connection to be installed in the suit property in his name as also when he started to threaten the seventy years old respondent No.1 with dire

consequences respondent No.1 filed the instant suit. In the light of the afore facts the cause with respondent No.1 is found to subsist till the filing of the instant suit by her and therefore the suit is held to be maintainable.

Joseph Severance's case (supra) was cited by learned counsel for the appellant. In that case the suit property was originally owned by one Francis Severance who was the father of Joseph Severance. Francis Severance had four children and one of his son Joseph Severance died in the year 1970. Francis Severance had already died in the year 1966 and after his death the suit property devolved on Joseph Severance and his other children. K.V.Mathew who was the husband of the second respondent before the Apex Court entered into an agreement of licence with Joseph Severance and other heirs of Francis Severance with regard to the suit property to construct a cinema thereupon. Such licence was repeatedly renewed. One of the conditions of the licence was that on the expiry of the licence period the licensee was required to surrender vacant possession of the suit property after demolishing the structure made thereupon. However, before the expiry of the licence period K.V.Mathew expired and notices sent to his heirs and wife to vacate the suit property having being ignored led to the filing of the suit for mandatory injunction as well as prohibitory injunction.

The Apex Court found that there was no specific plea taken by the defendants therein that the suit should have been one for the recovery of possession and that the suit for injunction was not maintainable. Rather the Apex Court found that before the Trial Court as also the First Appellate Court the primary case of the defendants to the suit was with regard to the effect of Section 60(b) of the Indian Easements Act, 1882 and the non-maintainability of the suit on the ground of non-joinder of necessary parties. The plea with regard to the maintainability of the suit for mandatory injunction was found to have been taken for the first time before the High Court and the Apex Court held that such question

would not be a substantial question of law but would be a question whose adjudication would depend upon the facts of that case with regard to reasonableness of time. While explaining the position of law, the Apex Court held that the licensee may be in occupation of the suit property but the licensor is the person who has control or possession of the property through his licence even after the termination of his licence. The licensee may continue to be in occupation of the premises for some time but wind up his business and in such a case the licensee cannot be treated as a trespasser. The Apex Court further went on to hold that it would depend upon the facts of each case but there could be an instance where after the revocation of the licence the licensor does not take prompt action. In such an event the licensee may be treated as a trespasser and that the licensor was required to be vigilant. It was further held that the licensee's occupation does not become hostile the moment the licence comes to an end and the licensor has to file a suit with promptitude and if it was shown that within a reasonable time a suit for mandatory injunction had been filed with a prayer for the licensee to evict the premises the suit would be maintainable.

As noticed earlier, the parties to the suit are closely related and the record reveals that in spite of consistent requests made by respondent No.1 (a seventy years' old lady and the mother of the appellant) requiring the appellant to vacate her residential house were not acceded to by the appellant and respondent No.2 apparently taking benefit of the inter se relationship between the parties. At a later stage when the appellant started to threaten respondent No.1 with dire consequences and initiated aggressive steps to legalize his possession over the suit property by applying to the Electricity Department to install an electric connection in the suit property in his name respondent No.1 preferred the instant suit. *Joseph Severance's* case (supra) would thus not apply to the facts of the present case.

In view of the above, no question of law much less any substantial

question of law arises in the present appeals warranting interference in the concurrent findings returned by both the Trial Court as also the Appellate Court.

Dismissed.

25.10.2017
shamsher

Whether speaking/reasoned

Whether reportable

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:

Yes / No

Yes / No

[DEEPAK SIBAL]

JUDGE