

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

RSA No.1241 of 2016 (O&M)

Date of Decision.26.04.2018

Charan Singh and another

.....Appellants

Vs

Sharda Devi

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sudhir Aggarwal, Advocate
for the appellants.

Mr. Sanjiv K. Aggarwal, Advocate
for the respondent.

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AMIT RAWAL J.(ORAL)

The appellants-defendants are aggrieved of the concurrent finding of fact whereby the suit of the respondent-plaintiff seeking mandatory injunction for handing over the possession of the suit property has been decreed vide judgment and decree dated 21.03.2014 and upheld by the lower Appellate Court.

It would be in the fitness of things to refer to few facts emanated from the pleadings for adjudication of the present regular second appeal. The respondents-plaintiffs instituted the suit on the premise that they are owners in possession of the residential/commercial property marked with letters ABCDEFGH consisting of shop, rooms, kitchen, open space as shown in black and red colours in the site plan situated at Mal Godown Road, Shyam Nagar within the municipal limits of Palwal comprised in Khewat No.4806, Khatoni No.5527, Rect. No.110, Killa No.5/1/2 measuring 13 marlas. It was stated that the aforementioned

property was purchased from the previous owner vide registered sale deed dated 07.04.1986. Thereafter, the plaintiff raised construction of residential house and shops on the suit property. Defendant No.2 being the real brother and defendant No.1 being real nephew approached the plaintiff and requested to provide shops on license to defendant No.1 for a period of six months for running medical store. Reposing faith in them, the aforementioned shop was given as permissive possession to the appellants-defendants. But they refused to vacate when requested. In march, 2008 plaintiff again asked to vacate the premises but he refused, therefore, revoked the licence by filing present suit.

A joint written statement was filed on behalf of the appellants-defendants by denying the ownership and possession of the plaintiff on disputed shop. It was claimed that the plaintiff was not owner of the property as per the site plan. The area of the sale deed was 390 sq. yard but he was in occupation of 737 sq. yards. Request of the plaintiff to vacate the premises was also emphatically denied.

The trial on the basis of the pleadings framed the following issues:-

“1. Whether the plaintiff has given the suit property to defendant on licence and is entitled to mandatory injunction, as prayed for? OPP

2. Whether the suit is not maintainable in the present form? OPP

3. Whether the plaintiff has no locus standi to file the present suit? OPD

4. Whether the plaintiff has not come with clean hand in the court by filing this suit? OPD

5. Whether the petition is bad for non-joinder or mis-joinder of necessary parties.

6. Relief.”

Both the parties brought on record respective evidence. The plaintiff examined as many as seven witnesses and tendered into evidence documents Ex.P1 to P-9, PW5/A and PW6/A whereas the defendants examined three witnesses and tendered into evidence documents Ex.D1 Map, Ex.DA Aks-sharja, Ex.DB copy of mutation No.14830, Ex.DW3/1 & DW3/2, Mark DX to DZ.

The trial Court decreed the suit on the basis of evidence, particularly, Ex.P6 and P-8 found that the respondent-plaintiff was the owner of the premise, the possession of the appellant-defendant was of a licence and. The appeal preferred before the lower Appellate Court against the aforementioned judgment and decree was also dismissed.

Mr. Sudhir Aggarwal, learned counsel appearing on behalf of the appellants-defendants submitted that along with the appeal, a misc. application bearing No.3528-C of 2016 has been moved for placing on record the site plan by way of additional evidence for just and factual adjudication of the aforementioned case. On merits, submitted that both the Courts below mis-read and mis-interpreted the evidence led by the parties by relying upon the judgment dated 11.09.1992, Ex.P6 titled “Sharda Vs. Navneet Kumar” in civil suit bearing No.751 of 1988. As a matter of fact, Sharda filed the suit against Navneet Kumar for declaration after purchase of the property which was decreed by the Civil Sub Judge, Palwal in her favour holding that she was owner in possession wherein the appellant No.2 Dhara Singh appeared as General Power of Attorney of Sharda. But the

dispute in the present case is with regard to the shops which are in possession of the appellants-defendants as there was no finding in the earlier litigation that the disputed property was/is owned by Sharda. A self-serving statement qua purchase of 13 marlas of land vide sale deed dated 7.4.1986 would not clothe status of ownership. The question of permissive possession and relationship of licensor and licensee did not arise, much less, the termination. The statement of the respondent has been taken as a gospel truth whereas the disputed property was/is part of *shamlat deh* property in which all the proprietors and co-sharers had holdings, thus, urges this Court for setting aside the finding under challenge.

On the contrary, Mr. Sanjiv K. Aggarwal, learned counsel appearing on behalf of the respondent submitted that in the previously instituted suit by the plaintiff against Navneet Kumar and others, site plan was brought on record which had not been objected to or opposed by the appellants-defendants. The site plan brought on record in the present suit showed that there were new construction raised on. Dhara Singh, brother of the plaintiff, appeared, as PW5 in the aforementioned suit, being a General Power of Attorney admitted that the plaintiff was the owner of the suit land, thus, aforementioned piece of evidence was sufficient for the Courts below to decree the suit. Defendant No.2 did not appear but contested the suit in the previous suit bearing No.751 of 1988. The suit for mandatory injunction on revocation of the licence for handing over possession has rightly been decreed as the status of the licensee became that of a trespasser. The cause of action arose to seek the indulgence of the Court by filing suit under Section 39 of the Specific Relief Act as there was breach of obligation on the part of the appellants-defendants, thus, urges this Court for

dismissal of the appeal by upholding the judgments and decrees rendered by the Courts below.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sudhir Aggarwal, for, the factum of the ownership of the property had been proved through the statement of Dhara Singh exhibited as Ex.P8 in the present suit, who appeared as power of attorney of Sharda in the suit filed against Navneet Kumar wherein he admitted that Sharda was owner of the disputed property, thus, there is no force in the argument of Mr. Aggarwal that the plaintiff failed to prove ownership of the property.

Now the question arises in such circumstances is that whether the appellants-defendants are required to hand over possession of the suit property on revocation of the license, the answer is “Yes”, for, Section 39 of the Specific Relief Act gives cause of action to the affected party to seek mandatory injunction on account of breach of obligation. Shops and the boundaries were constructed by Sharda. If at all, there was some falsehood in the statement of Dhara Singh, defendant No.2 herein, he should have appeared and controverted the same. The previous suit filed in the year 1988 was decided in the year 1992. Mere denial in the written statement would not dispense with proof of the statement submitted in the previous suit as the same is admissible as per the provisions of Section 33 of the Indian Evidence Act.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees rendered 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 determination

by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 26, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No