

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CM-5011-C-2018 and  
RSA-2129-2016 (O&M)

Date of Decision: 17.5.2018

Dharmender @ Babbal

....Appellant.

Versus

Ram Saran @ Lilu Ram

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,  
ACTING CHIEF JUSTICE.**

PRESENT: Mr. Sandeep Goyal, Advocate for the appellant.

**AJAY KUMAR MITTAL, ACJ.**

**CM-5011-C-2018 and CM-5621-C-2016**

Applications are allowed as prayed for. Annexures A-1 and A-2 filed along with the application are taken on record subject to all just exceptions.

**RSA-2129-2016 (O&M)**

1. This regular second appeal filed by the defendant arises from the judgment and decree dated 19.11.2015 passed by the Additional District Judge, Karnal, affirming that of the Civil Judge (Junior Division), Karnal dated 20.3.2012 vide which the suit of the plaintiff for possession, was decreed.

2. Sans unessentials, the facts of the case are that the plaintiff filed a suit for possession to the effect that he was owner of House No. 228,

Moti Nagar, Near K.R. Cinema, Karnal which he purchased vide sale deed dated 4.9.1986. The defendant along with Mahinder Kumar and Rajinder Kumar sons of the plaintiff requested the plaintiff for giving the house in question which was given to them with the condition that they would be the licensee of the plaintiff. It was also agreed that the plaintiff would have the right to revoke their licensee rights at any moment and they would perform all the social and moral duties towards the plaintiff and his family members to which they all agreed. Since the defendant and others failed to fulfill the terms and conditions, the plaintiff revoked the licensee rights of the defendant and his brothers on the intervening night of 30/31.10.2008. Thereafter, the brothers of the defendant vacated their 1/3<sup>rd</sup> share in the said house but the defendant did not vacate the 1/3<sup>rd</sup> portion shown in red colour in the site plan. The plaintiff requested the defendant to vacate the house in question, but to no effect. Accordingly, the plaintiff filed a suit for possession. Upon notice, the defendant filed a written statement raising various preliminary objections. It was pleaded that the defendant had purchased the house in question and had also spent huge amount on the construction of the same. In the family settlement, the portion of the house in question was returned to the defendant. It was further pleaded that the entries of the house remained in the name of the plaintiff and he was taking undue benefit of the same. The other averments made in the plaint were denied and a prayer for dismissal of the suit was made. The plaintiff filed replication controverting the averments made in the written statement and reiterated that of the averments made in the plaint.

3. From the pleadings of the parties, the trial Court framed the following issues including the additional issues:-

1. Whether the plaintiff is entitled to the decree for possession of red portion of site plan regarding house No.228, Moti Nagar, Karnal, illegally occupied by the defendant, as prayed for? OPP
2. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
3. Whether the plaintiff has no locus stand to file and maintain the present suit? OPD
4. Whether the suit is not maintainable? OPD
5. Whether plaintiff has not come to the court with clean hands and suppressed the true and material facts from the court? OPD

**Additional Issues:**

6. Whether the suit is bad for non-fixation of proper court fees? OPD
7. Relief.

4. The trial court on appreciation of the oral as well as the documentary evidence led by the parties held that the plaintiff was entitled to vacant possession over the red portion of the suit property within a period of two months subject to fixation of advalorem court fee within one month. Accordingly, the trial Court vide judgment and decree dated 20.3.2012 decreed the suit of the plaintiff. Feeling aggrieved, the defendant filed an appeal and the lower appellate Court vide judgment and decree dated 19.11.2015 affirmed the findings recorded by the trial Court and dismissed the appeal holding that the license was rightly terminated by the plaintiff and the defendant was liable to vacate the house in question and to

handover the possession of the suit property to the plaintiff. Hence, the present appeal claiming the following substantial questions of law:-

- “i. Whether the present suit of present respondent/plaintiff is maintainable?
- ii. Whether the plaintiff/respondent is entitle to decree for possession of red portion of site plan regarding house in question?
- iii. Whether the onus to prove that the portion in question was given as license and the revocation of the same was upon the present respondent-plaintiff in affirmative?”

5. I have heard learned counsel for the appellant and have gone through the judgments and decrees with his assistance.

6. Learned counsel for the appellant has made efforts to persuade this Court to come to a different conclusion than that of the courts below but could not show any material on the basis of which it could be held that the concurrent findings recorded by the courts below suffer from any misreading or misappreciation of evidence which may warrant interference by this court in the regular second appeal. The courts below have concurrently held that the plaintiff had terminated the license of the defendant-appellant by issuing a notice Ex.PX and after receipt of the said notice, the defendant-appellant became an unauthorized occupant. Still further, the courts below had recorded a finding that since the license was terminated by the plaintiff, therefore, the defendant was liable to vacate the house in question and to handover the possession of the suit property to the plaintiff.

7. No question of law, much less a substantial question of law arises in this appeal for consideration of this Court.
8. In view of the above, there is no merit in this appeal and the same is hereby dismissed. There shall, however, be no order as to costs.

**May 17, 2018**  
gbs

**(AJAY KUMAR MITTAL)**  
**ACTING CHIEF JUSTICE**

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|---------------------------|------------|
| <b>Speaking/Reasoned</b>  | <b>Yes</b> |
| <b>Whether Reportable</b> | <b>Yes</b> |