

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.2717 of 2016 (O&M)

Date of decision:08.05.2018

Lakhwinder Kaur @ Babli

... Appellant

Vs.

Mangal Ram

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. A.K.Sharma, Advocate
for the appellant.

Mr. Rakesh Gupta, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

Appellant-defendant No.2 is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit for mandatory injunction directing her to vacate the portion in dispute, part of house of plaintiff which is comprised in khasra no.246(2-15) as shown in red colour in the site plan with recovery of mesne profits, has been decreed by the trial Court and affirmed by the Lower Appellate Court.

Mr. A.K.Sharma, learned counsel appearing on behalf of appellant-defendant no.2 submits that respondent-plaintiff instituted the suit for possession and recovery of mesne profit on the premise that Tirath

Kumar-respondent No.1 being son of plaintiff and Lakhwinder Kaur being daughter-in-law, who are husband and wife were residing in the portion in dispute as plaintiff had given them permission to live in house as licensee. Defendant No.1 had gone abroad in the year 2002, whereas, defendant no.2 was residing in the portion in dispute alongwith Tamna and Baljinder Kaur. The defendants were in possession of one room, kitchen, varandah and also using the bathroom and toilet of the house of the plaintiff. The plaintiff disinherited the defendants from his movable and immovable property, vide notice dated 03.04.2006 and thereafter, a legal notice dated 11.08.2007 was served upon the defendants thereby terminating their license on 31.08.2008. Thereafter, the suit was filed on 21.01.2009.

The defendants appeared and filed written statement by raising a plea of maintainability and denied the relationship of licensor and licensee between the parties. It was alleged that plaintiff had committed cruelty upon defendant no.2 for which an FIR under Section 46 and 498-A IPC had already been registered against the plaintiff.

The trial Court on the basis of evidence decreed the suit and the appeal laid before the Lower Appellate Court also met with the same fate.

Mr. A.K.Sharma, learned counsel appearing on behalf of appellant-defendant No.2 submits that plaintiff has miserably failed to prove the relationship of licensor and licensee as it was collusive suit between the plaintiff and defendant no.1, for, relationship between appellant-defendant No.1 and plaintiff had become strange. Daughter in law cannot be ousted or branded as licensee. The pendency of FIR attributing cruelty to that

affect.

Mr. Rakesh Gupta, learned counsel appearing on behalf of the respondent-plaintiff submits that both the Courts below concurrently found the relationship of licensor and licensee between the parties. For seeking possession from the licensee, remedy is to file a suit for mandatory injunction and thus, urges this Court for dismissal of the appeal by affirming the findings under challenge.

I have heard the learned counsel for the parties, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Sharma, for, relationship of licensor and licensee which has been proved to the hilt, for, reply to the legal notice has been given by the appellant-defendant no.2. Mere lodging of FIR would not entail into different meaning, for, possession of defendant No.2 in the property had been on the fact that she was the wife of defendant no.1. Ownership of the property at the hands of respondent-plaintiff had not been denied. In such situation, status of daughter-in-law is of licensee and cannot be permitted to retain the possession, rightly so, the Courts below decreed the suit by granting the mandatory injunction and the remedy is under Section 39 of Specific Relief Act.

The arguments of Mr. Sharma have not been able to bring the case within the realm of illegality and perversity enabling this Court to form the different opinion than the one arrived at by the Courts below which are based upon the appreciation of oral and documentary evidence.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 08, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No