

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

RSA No.3464 of 2016 (O&M)

Date of decision:14.02.2018

Sunita

... Appellant

Vs.

Dharmvir

... Respondent

RSA No.3569 of 2016 (O&M)

Sunita

... Appellant

Vs.

Dharmvir

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.K.Verma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.9107-C of 2016 in RSA No.3464 of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 10 days in re-filing the appeal, is condoned.

C.M. stands disposed of.

RSA Nos.3464 and 3569 of 2016 (O&M)

This order of mine shall dispose of two regular second appeals

bearing Nos.3464 and 3569 of 2016 arising out of decision of two civil suits No.230-C dated 27.09.2011 titled as Dharamvir Vs. Sunita, (hereinafter called as “first suit”) for mandatory injunction seeking possession against the appellant-defendant and civil suit bearing No.41-C of 2012 titled as Sunita Vs. Dharamvir (hereinafter called as “second suit”) claiming declaration and permanent injunction at the instance of Sunita, defendant in the first suit and plaintiff in second suit. The facts are being taken from RSA No.3464 of 2016 arising out of first suit.

The first suit was instituted by the respondent-plaintiff on the ground that by virtue of decree dated 01.03.1976, he had become owner of the property and appellant-defendant/Sunita being real sister was a licensee. On revocation of licence, respondent-plaintiff requested her to vacate the premises but refused to do so, resulting into filing of the aforesaid suit. The suit was contested by the appellant-defendant on the premise that she had acquired the right in the property by implied conduct of other brothers, who had given their share in the property in dispute in oral settlement and therefore, she had right and title in the property, i.e., house no.332 property no.394/331 situated at Mohalla Rajgarh Near Bhagat Singh Chowk, Hisar.

Learned counsel for the appellant submitted that the Courts below have committed illegality and perversity in relying upon the decree dated 01.03.1976, (Ex.P5), whereby, the appellant-defendant at that time was minor. The house was separated owing to the conduct of her brothers, possession follows ownership and therefore, the suit for mandatory injunction was not maintainable, thus, the findings are devoid of merit,

much less not sustainable in the eyes of law and urged this Court for setting aside the judgments and decrees under challenge.

I have heard the learned counsel for the appellant and appraised the judgments and decrees of both the Courts below.

In order to establish that appellant-defendant had right in the property by birth, no documentary evidence has been placed on records, i.e., the property at the hands of her father was ancestral. Moreover, the right of un-married daughter had been introduced in 2005 by causing the amendment in Section 6 of Hindu Succession Act, therefore, she was not a coparcener in the said house at the time of passing of decree in the year 1976. The appellant-defendant in the first suit and plaintiff in the second suit did not succeed in claiming the title on the basis of declaration as the stand taken in the written statement and in plaint was identical. No witness has been examined to establish that decree was obtained by fraud or there was subsisting right at that time in the property in order to enable her to succeed in the suit. Even date of attaining of majority is also conspicuously wanting. The status of licensee is only valid till the licence subsists, on revocation of licence, would be of trespasser and thus, suit for mandatory injunction, in my view, was rightly filed and decreed.

As an upshot of my findings, there is no illegality and perversity in the findings under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other point has been argued.

Accordingly, the appeals stand dismissed.

(AMIT RAWAL)
JUDGE

February 14, 2018
savita

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