

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

RSA No.3885 of 2015 (O&M)

Date of decision:29.05.2018

Veena

... Appellant

Vs.

Satnam Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sachin Luthra, Advocate
for the appellant.

Mr. R.S.Longia, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The appellant-defendant has not been successful in defending the suit for possession and permanent injunction for ejectment of the defendant from the premises shown in red colour marked with letters EFGB of the total house marked with letters ABCD comprised in khasra no.141//4/9 min, situated at village Samlehri, Post Office Tepla, near Bus Stand Mithapur, Tehsil and District Ambala.

The respondent-plaintiff instituted the suit on the premise that suit property, vide sale deed dated 27.02.1992 was purchased on demise of his brother, Ramesh Kumar was put in possession. The possession on the suit premises was permissive. The aforementioned license was terminated but the defendant did not vacate the premises, thus, the suit was filed.

The appellant-defendant contested the suit on the premise that

license had become un-revocable, for, it was Ramesh Kumar who raised the construction on the plot. Since the parties were at variance, the trial Court framed as many as six issues including the issue of Relief. The respondent-plaintiff brought on record six documents, whereas, the appellant-defendants brought on record eight documents, i.e., photographs, PAN card, identity card, ration card, etc. besides Ex.DW4/A and Ex.DW4/B, i.e., copies of ration card of Veena Rani and Girdhari Lal.

The trial Court on the basis of aforementioned evidence decreed the suit and the appeal laid before the Lower Appellate Court was also dismissed.

Mr. Sachin Luthra, learned counsel appearing on behalf of the appellant-defendant submits that license had become un-revocable, for, respondent-plaintiff in a suit for permanent injunction filed by appellant made statement that he had nothing to do with the property and in this regard relied upon the judgment rendered by the Hon'ble Supreme Court in **Ram Sarup Gupta (dead) by LRs vs. Bishun Narain Inter College and others 1987 AIR (SC) 1242**, thus, urged that the suit was liable to be dismissed. The appellant-defendant is living with the children, whereas, the respondent-plaintiff is brother in law. The Courts below should have drawn the equities while deciding the suit instead of rendering the findings on technicalities, therefore, there is gross illegality and perversity in the judgments and decrees under challenge.

Per contra, Mr. R.S.Longia, learned counsel appearing on

behalf of the respondent-plaintiff submits that concurrent findings of facts and law cannot be tinkered with until and unless there is gross illegality and perversity. The appellant-defendant has miserably failed to lead any evidence with regard to the construction. Even the receipts of purchase and sale, Annexure A4 did not prove the case of the appellant, for, application under Order 41 Rule 27 CPC has not been filed nor any explanation has come forth in complying with the expression “*despite exercise of due diligence*”. The judgment and decree had already been executed. Even the possession has been taken.

I have heard the learned counsel for the appellant-defendant, 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.Luthra, for, appellant-defendant has miserably failed to lead any direct and cogent or direct evidence regarding raising of construction by her husband Ramesh Kumar. It was obligatory upon the appellant-defendant to examine mason, carpenter, proved receipts of gravel, iron, cement and sand etc and other material to prove that the entire construction on the plot owned by respondent-plaintiff was raised by husband of appellant-defendant and to make the license un-revocable. In such circumstances, ratio decidendi culled out in Ram Sarup Gupta's case (supra) would not come to the aid of appellant. Annexure A-4 is not accompanied by an application under Order 41 Rule 27 CPC giving cause, under what circumstances, the aforementioned evidence sought to be relied upon in the present appeal or had not been brought on record before the Courts below.

The arguments of Mr. Luthra being devoid of merit have not been able to bring the case within the realm of illegality and perversity, warranting interference in the concurrent findings of facts and law 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 argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 29, 2018
savita

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