

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

RSA No. 1336 of 2018(O&M)

Date of decision: 8.3.2018

Jasbir Kaur and another

....Appellants

VERSUS

Gurmit Singh Bajwa

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.S. Khinda, Advocate for the appellants.

REKHA MITTAL, J.

The present appeal directs challenge against judgment and decree dated 29.11.2017 passed by the Additional District Judge, Chandigarh whereby the appeal preferred by the respondent/plaintiff against the judgment and decree dated 09.05.2016 passed by the Civil Judge (Junior Division), Chandigarh (hereinafter to be referred as the trial Court) was allowed, judgment and decree passed by the trial Court was set aside and the suit for mandatory injunction filed by the respondent/plaintiff was allowed and the respondent/plaintiff was held entitled to mesne profits at the rate of Rs.2000/- per month from the date of issuance of notice of termination of licence.

The facts relevant for disposal of present appeal are that as per case set up by the respondent/plaintiff, house No.2064/3, Sector 45-C, Chandigarh was allotted to S. Jagir Singh Bajwa (since deceased), late

father of the respondent by Chandigarh Housing Board, Chandigarh. On death of S. Jagir Singh Bajwa conveyance deed of the house in question has been executed in favour of the respondent through Estate Officer, U.T. Chandigarh on 01.05.2012. Sarupinder Singh Bajwa (since deceased) and now represented by the appellants/defendants was allowed to reside in the suit property as a licensee from 2002 by S. Jagir Singh Bajwa. The respondent/plaintiff requested Sarupinder Singh Bajwa to vacate the suit property but he failed to respond. Notice dated 03.05.2013 was issued to Sarupinder Singh Bajwa, for revoking his licence through registered cover and the same is presumed to be duly received by him as it was not received back. The respondent claimed damages at the rate of Rs.400/- per day for the period 31.05.2013 to 31.08.2013 and future damages at the same rate till possession of suit house is handed over.

The appellants/defendants resisted claim of the respondent/plaintiff on the averments that after death of S. Jagir Singh Bajwa, respondent due to some ill-will got transferred the suit property in his name and objections raised by late husband of defendant No.1 were wrongly rejected by the Chandigarh Housing Board. They have denied that Sarupinder Singh Bajwa was residing in the property as a licensee or the purported licence got revoked by way of notice propounded by the respondent/plaintiff. They have also controverted the allegations with regard to entitlement of the respondent/plaintiff to receive damages.

The trial Court framed the issues detailed in para 4 of judgment of the trial Court, permitted the parties to adduce evidence in support of their respective contentions but eventually suit filed by the

respondent/plaintiff was ordered to be dismissed on the basis of findings recorded on issue No.1. As has been noticed hereinbefore, the appeal filed by the respondent/plaintiff was allowed by the first Appellate Court in the aforesaid terms.

The sole submission made by counsel for the appellants is that respondent/plaintiff neither produced on record Will purported to be executed by Jagir Singh Bajwa in his favour nor the conveyance deed executed by the Estate Office, U.T. Chandigarh. It is further argued that as the respondent/plaintiff failed to establish his plea with regard to his being owner of the suit house, the trial Court rightly dismissed his suit but the Court in appeal seriously erred by reversing findings of the trial Court on issue No.1.

Be that as it may, it is undisputed position of the case that the suit property was allotted to S. Jagir Singh Bajwa by the Chandigarh Housing Board, Chandigarh. There is no dispute that Gurmit Singh Bajwa respondent/plaintiff is the son of S. Jagir Singh Bajwa. Another son of Jagir Singh namely Santokh Singh appeared in the witness box to support cause of the respondent/plaintiff. The appellants in the written statement have not disputed that suit property has been transferred in the name of respondent/plaintiff while objections raised by late Sarupinder Singh Bajwa, predecessor in interest of the appellants were rejected by the Chandigarh Housing Board, Chandigarh. In the given scenario, non-production of the Will or conveyance deed by the respondent/plaintiff is of no consequence. This apart, had there been no Will in favour of Gurmit Singh Bajwa, he would inherit the suit property on the basis of natural

succession until he is excluded from inheritance by a testament or under any relevant provision in law. In this view of the matter, there is no merit in contention of the appellants that the respondent/plaintiff failed to establish his plea with regard to his ownership of the house in question. This apart, the appellants have not claimed any ownership rights in the suit house either by Sarupinder Singh Bajwa (since deceased) or by the appellants on any ground whatever. They have not even claimed themselves to be in possession in any capacity other than being related to Jagir Singh Bajwa, original allottee of the house in question. In this view of the matter, contentions raised by counsel for the appellants do not give rise to a substantial question of law that requires adjudication after hearing the contesting party.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

MARCH 8, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no