

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

RSA No.1666 of 2018 (O&M)

Date of decision: 24.09.2018

Surinder Kaur

... Appellant

Versus

Harbhajan Lal and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. J.S. Lalli, Advocate
for the appellant.

REKHA MITTAL, J. (Oral)

CM No.4858-C of 2018

Heard.

Allowed as prayed for. Documents (Annexures A1 to A4) are
taken on record, subject to just exceptions.

Main Case

The present appeal directs challenge against the judgment and
decree dated 01.02.2018 passed by the Additional District Judge, Jalandhar
whereby two appeals, one filed by Harbhajan Lal respondent No.1/plaintiff
and the other by Amritpal Singh, husband of the appellant were decided.
The appeal filed by Harbhajan Lal was allowed, judgment and decree dated
31.10.2014 passed by the trial Court were set aside and suit filed by the
respondent/plaintiff for mandatory injunction is decreed with a direction to

the appellant and her co-defendants to hand over vacant possession of premises in question to Harbhajan Lal within two months. However, appeal filed by Amritpal Singh was ordered to be dismissed.

The present lis pertains to house/kothi No.165, Guru Teg Bahadur Nagar, Jalandhar. The parties to the litigation are closely related. Harbhajan Lal, respondent/plaintiff is the father of Amritpal Singh who was married with appellant Surinder Kaur and there is a daughter named Sania @ Parneet Kaur (minor) out of wedlock of Amritpal Singh and Surinder Kaur. Harbhajan Lal filed the suit for mandatory injunction for issuance of directions to the defendants to hand over vacant possession of one room on the ground floor and one bathroom on the first floor of aforesaid house, detailed in head note of the plaint on the premise that he is exclusive owner of the suit property on the basis of allotment by Jalandhar Improvement Trust in the year 1978 in the form of a plot on which construction was raised by him by spending huge money from his pocket. The defendants are in possession of the demised premises as licensee with permission of the respondent/plaintiff. The licence was oral between the plaintiff and defendants No.1 and 2. The behaviour of defendants No.1 and 2 became disrespectful towards the plaintiff and he disowned them from his movable and immovable property vide publication dated 23.09.2008 made in newspaper Nawan Zamana. The plaintiff filed a complaint against both the defendants before SSP, Jalandhar on 31.01.2009. He requested the defendants to hand over vacant possession of the premises by making it

clear that licence in their favour stands terminated. They dragged the plaintiff in false and frivolous case titled 'Amripal Singh and others Vs. Harbhajan Lal and others'.

The defendants filed the written statement and raised the plea that they have filed suit for permanent injunction against the plaintiff, his wife, elder son and daughter in law for restraining them from dispossessing the defendants in which order of status quo with regard to possession has been passed. The defendants are co-sharers in the suit property and in joint possession of bath room, kitchen, terrace and other portions. The plaintiff under influence of his elder son Baldev Singh and his wife Neelam Rani has the intention of usurping share of defendants and is trying to dispossess them by force and illegal means.

The controversy between the parties led to framing of issues, reproduced in para 4 of the judgment of the trial Court. Having heard counsel for the parties, in the light of materials on record, the learned trial Court has held that house in dispute is shared household of defendant No.2 and her right to residence in the suit property cannot be denied. However, the Court negated contention of the defendants that they are co-sharers in the suit house with the findings that title in the suit property vests in plaintiff. As has been noticed hereinbefore, the judgment and decree passed by the trial Court led to filing of two separate appeals by the contesting parties that came to be decided by the First Appellate Court in the terms indicated hereinbefore.

Counsel for the appellant/defendant No.2 has argued with vehemence that Surinder Kaur wife of Amritpal Singh has a right of residence in the suit property being her shared household in view of the provisions of Protection of Women from Domestic Violence Act, 2005 (in short 'the Act'), the trial Court had rightly held that the appellant cannot be evicted from the premises in question but the Court in appeal has seriously erred by reversing findings of the trial Court in this regard. It is further argued that the defendants filed an application for framing of additional issues by invoking Order 14 Rule 5 read with Section 151 CPC and the same was decided by the trial Court vide order dated 14.10.2014 (Annexure A4) wherein the Court though dismissed the application but has held that the applicants want to frame additional issues to the effect that house in question is shared household of defendant No.2 but the Court is of the view that this question can be determined while adjudicating issue No.1 as determination of nature of possession of defendants is the primary question to decide real controversy between the parties. It is further argued that as plea of defendant No.2 with regard to her right to live in house in question being a shared household was left to be decided by the trial Court at the time of final adjudication and was eventually decided in her favour, the Court in appeal has seriously faulted by holding that plea of shared household is beyond pleadings and cannot be allowed to be raised.

I have heard counsel for the appellant, perused the paper book particularly the judgments passed by the Courts.

There is no dispute about nature of relationship between the parties. The plaintiff is the father and father in law of defendant Amritpal Singh and Surinder Kaur, respectively. He asserted his claim to seek vacant possession of the premises in question primarily on two grounds i.e. he is exclusive owner of suit house and defendants No.1 and 2 are merely licensees in the demised premises and cannot be allowed to retain possession since their licence stands revoked/cancelled. Amritpal Singh claimed himself to be co-sharer in the suit house but his plea in this regard was rejected by both the Courts. He has not filed second appeal to challenge concurrent findings upholding plea of the respondent/plaintiff that he is exclusive owner of the suit house.

Perusal of the written statement filed by the defendants would reveal that they have not asserted right of possession on any other ground except claiming them to be co-owners in the suit house being son and daughter in law of Sh. Harbhajan Lal. Counsel for the appellant has not disputed that no such plea was raised by the defendants including the appellant that she is entitle to live in the house being shared household within the meaning of the Act.

The trial Court accepted plea of the appellant of shared household and consequently rejected claim of the plaintiff that defendants are liable to be evicted. The learned trial Court failed to appreciate that any factual plea raised beyond pleadings or evidence led to prove the same cannot be looked into much less accepted. In this view of the matter, the

Appellate Court has rightly held that no such plea of shared household being beyond pleadings can be entertained much less accepted.

To be fair to the appellant, counsel has tried to take advantage of certain observations made by the trial Court while deciding application under Order 14 Rule 5 read with Section 151 CPC for framing additional issue. Perusal of the order dated 14.10.2014 passed by the trial Court would reveal that while making certain observations taken note of hereinbefore, the trial Court has neither adverted to pleadings of the parties particularly defence raised by the defendants including the appellant nor has addressed question of non raising any such plea of shared household in the light of pleadings of the parties. Since application filed by defendants No.2 and 3 for framing additional issue was dismissed by the trial Court, there was no occasion for the respondent/plaintiff to file a petition before this Court to challenge order dated 14.10.2014. In the given scenario, the appellant cannot derive any advantage to her contention from the observations made in order dated 14.10.2014. On the contrary, if the appellant had thought of filing an application for framing of additional issue but did not opt to raise a plea with regard to his right in the suit property being her shared household, it clearly shows that she has waived or relinquished any such plea to claim an independent right in the suit property by invoking provisions of the Act. In this view of the matter, the appellant cannot be allowed to assert her right to live in the suit house on the pretext of property in question being her shared household.

No other point has been raised.

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

No order as to costs.

24.09.2018
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No