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

RSA-2247-2017 (O&M)

Date of decision : 05.12.2018

Nem Singh and others

... Appellants

Versus

Mahender Kumar Jain and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Satbir Rathore, Advocate
for the appellants.

Mr. Shailendra Jain, Senior Advocate with
Ms. Anupama Arigala, Advocate
for caveator-respondent No.1.

AMIT RAWAL, J.

The appellants-defendants have not been successful in defending the suit for mandatory and prohibitory permanent injunction, whereby they have been ordered to be evicted from the suit property.

The plaintiff averred that he along with elder brother and husband of Poonam Jain and father of Aman Jain, Surender Kumar Jain, who had taken "Sanyas" in the year 1984-85, are owners of the property. Raghubir Singh Jain rented out some portion of the property consisting of two rooms, one kitchen, toilet and one verandah, whereas three rooms, verandah was given to Bihari Lal (now deceased) and defendants being successors-in-interest. In 1984, the plaintiff and his brother had filed a suit for injunction against Bihari Lal and defendant Nos.1 and 2, for restraining

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from taking the forcible possession, but during the pendency of the suit, the license was renewed and the defendants were agreed to abide by the license. The defendants refused to vacate the premises, as requested.

The defendants opposed the suit by taking the objection of maintainability under Order 41-h of Specific Relief Act. It was alleged that the plaintiff had already obtained the injunction against the defendants wherein, he had accorded status of tenant, therefore, the suit, aforementioned, was not maintainable.

Learned counsel appearing on behalf of the appellant submitted that once the appellant had the injunction in their favour in *ex parte* judgment and decree, in which, the application under Order 9 Rule 13 CPC on behalf of the respondent-plaintiff was pending adjudication, therefore, judgment and decree in the present suit could not be assailed. The respondent-plaintiff had filed the similar suit, which was dismissed as withdrawn and therefore, the second suit was hit by *doctrine of akin to res judicata*.

I am afraid the aforementioned argument is not sustainable as the defendants cannot be permitted to take the benefit of *ex parte* decree dated 10.02.1988 without proving its validity. Nothing prevented the defendants to take up the plea in the present suit to prove the same. In the absence of any receipt and proof thereof, the defendants cannot be accorded the status of tenants. The relationship was of a licensee, which concededly was admitted by the plaintiff, in the earlier round of litigation. In such circumstances, in view of the personal grant between the grantor and grantee and on its revocation, the grantor can always seek the possession.

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In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

05.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**