

RSA-3217-2017 (O&M)

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

**RSA-3217-2017 (O&M)
Date of decision : 26.11.2018**

Roop Singh

... Appellant

Versus

Darshan Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ravish Bansal, Advocate
for the appellant.

AMIT RAWAL, J.

CM-7928-C-2017

For the reasons stated in the application, the application is allowed and the delay of 20 days in refiling the appeal is condoned.

CM-16374-C-2018

Allowed as prayed for.

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The appellant-plaintiff has not been successful in claiming the mandatory injunction against the respondents in respect of land measuring 1 kanal 1 marla by branding him to be licensee. It was alleged that the aforementioned piece of land was purchased vide sale deed dated 22.02.2000 and thereafter, the plaintiff constructed the house and permitted the defendants to use and occupy the same as a licensee. On revocation of the license, the suit was filed.

The defendants opposed the suit claiming themselves to be

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owner of land measuring 8 marlas vide sale deed dated 04.12.2006 (Ex.D1) and denied the construction as the sale deed reflected only land, but admitted that the construction was raised out of his own funds.

Both the Courts below have not agreed with the contentions of the plaintiff.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that the Courts below have abdicated in not appreciating the fact that the defendants were in the entire occupation of the land measuring 21 marlas, though the sale deed confined to 8 marals. The constructed portion may be on 8 marlas' land, but the remaining land could not have been in occupation. The status was, thus, of a licensee in view of fiduciary relationship.

The plaintiff in the replication denied the sale deed, but did not challenge the same as the agent on the basis of the attorney breached the trust.

I am afraid the aforementioned argument is not sustainable as the contents of the sale deed (Ex.D1), read out, reflected only a land, thus, the plea of raising the construction and giving permissive possession was based on falsehood. The defendants after having become owner had raised the construction. The irreconcilable deduction liable to be drawn is that the defendants raised the construction. Even in the absence of the sale deed, in case a licensee raises the construction in view of the *ratio decidendi* culled out by Hon'ble the Supreme Court in **“Ram Sarup Gupta V/s Bishnu Narain Inter College and others” 1987 AIR SC 1242**, the license automatically deemed to have been revoked .

Be that as it may, the plaintiff miserably failed to establish the

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status of the defendants as licensee and in the absence of any challenge to the sale deed, I do not find any illegality and perversity in the impugned judgments and decrees.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Bansal to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

26.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**