

RSA-407-2017 (O&M)

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

**RSA-407-2017 (O&M)
Date of decision : 05.12.2018**

Poonam Mahajan

... Appellant

Versus

Shashi Mahajan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Hitesh Verma, Advocate for the appellant.

Mr. Gaurav Chopra, Advocate for respondent No.1/Caveator.

AMIT RAWAL, J.

The appellant-defendant has not been successful in defending the suit for mandatory injunction seeking ejectment from the House No.63, Sector 15, Panchkula.

The plaintiffs sought the possession of the first floor of the house, aforementioned, to be in possession of appellant-defendant, on the premise that they were creating nuisance and extending the threats. The status of the defendant, according to the plaintiffs, was of a licensee being son and daughter-in-law/defendant Nos.1 and 2. It was pleaded that her son/defendant No.2 was married to defendant No.1 on 27.01.1999 and two children aged 10 and 11 years were born out. The construction on first floor was made only for the purpose of residence of the son and his family. In other words, they were permitted to live on the first floor. Defendant No.1 lodged FIR under Sections 406, 498-A and 323 IPC against the plaintiff as well as respondent/defendant No.2/husband. It is, in these circumstances, ejectment was sought.

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The defendants opposed the suit by taking objection of maintainability, payment of court fees. It was pleaded that defendant had already granted protection under the provisions of Protection of Women from Domestic Violence Act, 2005 and sought the stay of the suit, under the provisions of Section 10 of the Code of Civil Procedure. It was alleged that the property was joint, which was purchased from the funds from Yash Mahajan, her father-in-law.

Since the parties were at variance, the trial Court framed the following issues:-

1. *Whether the defendant No.1 and 2 are liable to hand over the vacant possession of the first floor of the house in question to the plaintiff being the owner thereof? OPP*
2. *Whether the defendant No.3 is liable to be restrained from visiting the property in question on the grounds mentioned in the plaint ? OPP*
3. *Whether the suit is not maintainable in the present form? OPD*
4. *Whether the plaintiff has not come to the Court with clean hands? If so, its effect? OPD*
5. *Whether the plaintiff has no locus standi or cause of action to file this suit? OPD*
6. *Whether the suit is bad for non-joinder of necessary parties and mis-joinder of defendant No.3 as a party to this suit? OPD*
7. *Relief.*

Both the parties had brought on record extensive documentary

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evidence and on the basis of the same, the trial Court decreed the suit. The appeal preferred before the lower Appellate Court was dismissed.

Learned counsel appearing on behalf of the appellant-defendant in support of the memorandum of appeal has raised the following contentions:-

1. The suit as per the provisions of Order 1 Rule 9 of the Code of Civil Procedure on account of non-impleadment of the children was not maintainable.
2. The plaintiff was aged 60 years at the time when the suit was filed in the year 2012, whereas the jurisdiction of the civil court as per the provisions of Section 27 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (in short 'the 2007 Act'), was barred.
3. The appellant has already been granted protection by this Court under the proceedings arising of domestic violence.

I have heard learned counsel for the appellant-defendant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Verma, as the relationship of licensee and licensor are governed under the Easement Act. Licensee is obliged to hand over the possession to the licensor on revocation of the license and in case, there is a breach of obligation, the licensor has a remedy to seek redressal of the obligation as per the provisions of Section 39 of the Specific Relief Act. For the sake of brevity, the provisions of Section 39 of the Specific Relief Act read as under:-

"39. Mandatory injunctions.—When, to prevent the breach of

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an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts."

It is a personal grant between the grantor and the grantee and in such circumstances, family of the grantee is not required to be impleaded. Such argument is accepted, then in the cases of ejectment of a tenant, family members would require to be impleaded. This is not the scope of the provisions of law. The legislature in the wisdom, while promulgating the 2007 Act had protected the rights of the senior citizens to espouse their grievances and by incorporating Section 27 of the 2007 Act, ousting jurisdiction of Civil Court was not meant to barring the senior citizen to seek eviction, but on the premise, the opposite side cannot seek the injunction against the senior citizens as and when such proceedings are initiated.

The aforementioned arguments of Mr. Verma, in my view, is devoid of merits. No ground for interference is made out, much less, no substantial question of law arises for determination.

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**