

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

**RSA No.133 of 2015 (O&M)
Date of Decision.11.01.2019**

Sheela Devi

...Appellant

Vs

Ram Sarup (since deceased) through LRs and another

...Respondents

2. C.R. No.5438 of 2018

Sheela Devi

...Appellant

Vs

Rajpal Panwar and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Chetan Mittal, Senior Advocate with
Mr. Varun Issar, Advocate
for the appellant.

Mr. Hitender Kansal, Advocate
for respondent No.1.

Mr. Vineet Sehgal, Advocate
for respondent No.2 in RSA No.133 of 2015.

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two matters; regular second appeal bearing No.133 of 2015 and civil revision No.5438 of 2018 at the instance of the defendant. The appeal has been preferred against the concurrent finding of fact and revision petition against the order dated 01.08.2018 whereby while allowing impleadment of legal representatives of deceased-Ram Sarup, name of one Rajpal Panwar has been excluded.

Respondent-Ram Sarup, as he then was alive, instituted the suit for eviction of the appellant-defendant from ground floor of

House No.113, New Colony, Khuda Lahora, U.T., Chandigarh under the tenancy Act by branding her to be licensee.

The appellant-defendant No.1 opposed the suit and supported her possession being matrimonial home. Certain allegations qua mishandling were also levelled, much less, registration of criminal case and filing of petition under the Hindu Marriage Act.

Defendant No.2 Rajpal, husband of the appellant-defendant No.1 filed a separate written statement and stated that appellant-defendant No.1 had created a complete disharmony only to matrimonial discord.

Mr. Chetan Mittal, Senior Advocate assisted by Mr. Varun Issar, learned counsel appearing for the appellant-defendant No.1 submitted that Ram Sarup, the licensor has died on 17.02.2017 and in these circumstances, the decree has become inexecutable, for, the licence was personal and it is not heritable.

In support of the aforementioned contention, relied upon the ratio decidendi culled out by this Court in **Sunder Lal Vs. Sita Bali 2003 (3) RCR (Civil) 243** and Madras High Court in **Chinnan and others Vs. Ranjithammal 1931 AIR Madras 216**.

Per contra, Mr. Hitender Kansal, learned counsel appearing on behalf of respondent No.1 supported the judgments and decrees of the courts below by submitting that relationship would relate back to the filing of suit and change circumstances would not be relevant upon the point of consideration. Legal representatives have already been brought on record and the license is inheritable and

thus, urged this Court for dismissal of the appeal.

On the basis of the aforementioned arguments and pleadings, following substantial questions of law arise for determination:-

“1. Whether on the demise of licensor, relationship between licensor and licensee, continues or extinguished?

2. Whether the license is a personal or inheritable?”

I have heard the learned counsel for the parties, appraised the judgments and decrees and of the view that there is force and merit in the submissions of Mr. Mittal.

The substantial questions of law framed herein above are liable to be answered in favour of appellant. It would be apt to reproduce Section 39 of Specific Relief Act:-

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

On perusal of the aforementioned provisions, it is deciphered that a person can seek the mandatory injunction when there is breach of an obligation. The breach of an obligation is a personal and not inheritable. It is in existence during the life time of licensor, who unfortunately died. It is extinguished, like the tenancy law, license is not inheritable. The aforementioned view of mine, is

derived from the ratio decidendi culled out in the judgments cited (supra). For the sake of brevity, relevant extract of finding in paragraph 3 of the judgment cited supra reads as under:-

“3. These provisions do not in terms lay down that a license is revoked by a conveyance of the property. On the other hand, the English Law, which undoubtedly forms the basis of the Indian Statute, seems clear that the license terminates. "if a man gives a license and then parts with the property over which the privilege is to be exercised," says Pollock, C.B., in Coleman v. Foster (1856) 1 H. & N. 36 : 156 E.R.1108, "the license is gone. A license is a thing so evanescent that it cannot be transferred." The same view is to be found expressed in Wallis v. Harrison (1838) 4 M. & W. 539 : 150 E.R. 1543. There can be no doubt that the transferee is not bound by the license. But does the licensee, from the moment the transfer takes place, become a mere trespasser, or should he be considered until the contrary appears, to hold under an implied license? We do not think that it will become necessary in this case to decide that point, because, if the information given to us is correct (no evidence was taken), Poonjolai died in or about 1904. and there seems no doubt that the license expired with his death. The learned City Civil Judge seems to be in error in holding that the defendants came in as licensees, if by that he means that, after Poonjolai died, the license was (renewed) in their favour. Nor do we think, that the license granted to Poonjolai became vested in them as his successors. A license is not annexed to the property in respect of which it is enjoyed, nor is it a

transferable or heritable right, but is a right purely personal between grantor and licensee.....”

As a result of aforementioned findings, judgments and decrees of the Courts below is not sustainable and suffered from illegality and perversity and the same are hereby set aside. The regular second appeal is allowed.

The revision petition is rendered infructuous in view of the fact that judgments and decrees are set aside. However, dismissal would not prevent the parties to claim their right qua their respective shares in case Ram Sarup died intestate or left any testamentary document.

(AMIT RAWAL)
JUDGE

January 11, 2019
Pankaj*

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No