

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

RSA No.5152 of 2015 (O&M)
Date of decision : 11.03.2019

Prem Sagar

...Appellant

Versus

Bimla Sharma and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vipin Mahajan, Advocate for the appellant.

Mr. Kuldip Sanwal, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court reversing the judgment and decree passed by the learned trial Court.

The plaintiffs-daughters of late Sh. Bishambar Dass have filed this suit for recovery of possession by way of mandatory injunction claiming that they are owners of the property and the possession of the defendant is as a licensee which has been revoked vide notice dated 01.04.2003.

Defendant contested the suit and pleaded that the plaintiffs are not owners and in fact late Sh. Bishambar Dass had executed a sale

deed in favour of the defendant on 10.04.1984 for a sum of ₹15,000/- out of which ₹10,000/- was received at the time of execution of the sale deed and thereafter remaining amount of ₹5,000/- was paid on 12.05.1984. As noticed, the trial Court dismissed the suit. Learned First Appellate Court reversed the judgment and decree passed by the trial Court while merely recording that Ex.D1, the alleged sale deed dated 10.04.1984 is not registered and since the defendant-appellant is also claiming ownership under the aforesaid sale deed dated 10.04.1984 from Bishambar Dass, therefore, the ownership of the plaintiffs is admitted.

Learned counsel appearing for the appellant has submitted that the defendant-appellant is residing in the aforesaid house for the last 30 years. He read over the statement of one of the plaintiff who has admitted that the defendant is residing on the aforesaid house for the last 25 years. He further submitted that the electricity as well as water connection is in the name of defendant-appellant. Hence, he submitted that irrespective of fact as to whether the defendant-appellant is proved to be owner or not, the possession of the plaintiff is protected under Section 53-A of the Transfer of Property Act. He admitted that this argument was not advanced before the Courts below, however, he submitted that in absence of any evidence that the property was given on licence by the plaintiffs or their predecessor to the defendant, the suit could not be decreed.

On the other hand, learned counsel for the respondents-plaintiffs submitted that once the ownership of the plaintiffs is proved and

rather admitted, the First Appellate Court rightly accepted the appeal and pass the decree.

No doubt, counsel for the defendant-appellant did not raise before the Courts below for protecting possession under Section 53-A of the Transfer of Property Act i.e. part performance of the agreement to sell, however, there is unregistered sale deed in favour of defendant. The First Appellate Court has not found that such sale deed is forged or fabricated. In fact, the First Appellate Court has reversed the judgment of the trial Court only on the ground that the sale deed Ex.D1 is unregistered.

Learned Appellate Court has not found that the possession of the defendant-appellant is as a licensee. The Court has held that since the ownership of the father of the plaintiffs is not disputed, therefore, the plaintiffs are owners and consequently they are entitled to decree for possession.

This Court is of the considered opinion that the case requires to be remitted back to the learned trial Court to re-decide the suit after framing distinct issues with regard to the assertion of the plaintiffs that the possession of the defendant is as a licensee which is disputed by the defendant-appellant. The Court would also frame independent issue on the applicability of Section 53-A of the Transfer of Property Act. It may be noticed that one of the marginal witness of Ex.D1, Makhan Singh has been examined.

Keeping in view the aforesaid facts and without going into

further details, it is considered appropriate to remit back the matter to the learned trial Court to re-decide the suit. Needless to observe that any observations made by this Court shall not be taken as an expression of final opinion on the merits of the case.

Accordingly, the judgments passed by the trial Court as well as First Appellate Court are set aside.

Regular Second Appeal is disposed of.

Parties through their counsel are directed to appear before the learned trial Court on 04.04.2019.

Learned trial Court is requested to re-decide the suit preferably within a period of nine months.

11.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No