

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

**RSA No.433 of 2014 (O&M)
Date of decision:10.01.2019**

Ishwar Dass

... Appellant

Vs.

Parkash Chand and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sarju Puri, Advocate
for the appellant.

Mr. Anupam Bhardwaj, Advocate
for the caveator-respondent(s).

AMIT RAWAL J. (Oral)

Notice of motion.

Mr. Anupam Bhardwaj, Advocate, who is present in Court,
accepts notice on behalf of the caveator-respondent(s).

The present Regular Second Appeal at the instance of
appellant-defendant no.1 is directed against the judgment and decree of the
Lower Appellate Court, whereby, suit filed by the respondent/plaintiff-Piara
Lal (since deceased), dismissed by the trial Court, has been decreed.

Piara Lal, father of the appellant sought indulgence of the trial
Court by invoking the provisions of Section 39 of Specific Relief Act, 1963
(hereinafter referred to as "1963 Act") for issuance of mandatory injunction
for handing over the possession of the premises described in the plaint by
branding and conferring the status upon his son as licensee.

The defendants opposed the suit and claimed the suit property to be ancestral and therefore, status was not of licensee and suit *ex facie* was not maintainable. The trial Court, as noticed above, dismissed the suit but the Lower Appellate Court, decreed the suit.

Mr. Sarju Puri, learned counsel appearing on behalf of the appellant-defendant no.1 submitted that Piara Lal, two months after filing of the suit, had unfortunately expired, therefore, relationship of licensor and licensee stood extinguished. It was a personal grant which is not transferable. The relationship between guarantor and guarantee is also evaporated.

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**.

The question of Will and relationship between siblings can always be adjudicated in an independent proceedings but not in the present suit as it is based upon different cause of action.

Per contra, Mr. Anupam Bhardwaj, learned counsel appearing on behalf of the respondent/plaintiff supported the judgment and decree of the Lower Appellate Court 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 as well as record of both the Courts below and of the view that there is force and merit in the submissions of Mr. Sarju Puri.

The substantial questions of law framed hereinabove are liable to be answered in favour of appellant-defendant no.1.

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 Piara Lal, who unfortunately died after two months of filing of suit. 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 regards the Will of Piara Lal and inheritance by way of natural succession or through testamentary document would not be matter of concern or adjudication in a suit of present nature. It would not preclude the parties to assert their rights in an independent proceedings as it is based upon the different cause of action.

As a result of aforementioned findings, judgment and decree of the Lower Appellate Court is not sustainable and suffered from illegality and perversity and the same is hereby set aside and that of trial Court is restored.

The regular second appeal is allowed.

(AMIT RAWAL)
JUDGE

January 10, 2019

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No