

RSA No. 3591 of 2018 (O&M)

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

**RSA No. 3591 of 2018 (O&M)
Date of decision: 27.9.2019**

Naresh Kumar

... Appellant

Versus

Bhupinder Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. P.K. Ganga, Advocate
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiff was dismissed by the trial court, vide judgment and decree dated 27.11.2015, and as even the appeal preferred against the said decree failed and was dismissed on 24.01.2018, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff sought a decree for injunction simplicitor, restraining the defendant from causing any interference in his peaceful possession over a room measuring 12'-10"x14', room 10'x 9', a kitchen measuring 5'x 6' and a store 3'x3', as depicted in pink colour in the site plan appended with the plaint.

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In brief, the case set out by the plaintiff has been that entire double storeyed house was earlier owned by the father of the parties, and post his death, it was inherited by their mother, namely, Ishawar Devi @Ishawari Devi widow of Mool Chand. The plaintiff and defendant have four other brothers, namely Ravi Kant, Bhuvnesh Kumar, Satish Kumar and Vijay Kumar, out of whom Vijay Kumar has since passed away and other two brothers, i.e. Bhuvnesh Kumar and Satish Kumar, were living separately. Mother of the parties partitioned the house in question between four brothers, namely, Naresh Kumar (plaintiff), Bhupinder Kumar (defendant), Vijay Kumar and Ravi Kant. After the death of Vijay Kumar, his wife and children were occupying a separate portion in the house in question, shown in green colour in the site plan. Likewise, pursuant to the said partition, the plaintiff was occupying the disputed portion. For, the defendant sought to dispossess the plaintiff, thus the suit.

In defence, the defendant, pleaded, *inter alia*, that the plaintiff had no right, title or interest in the suit property, as the answering defendant was the absolute owner in possession thereof. In fact, the house in question was sold by Ishawari Devi to the defendant. Subsequently, Ishawari Devi challenged the said sale deed in a suit against the defendant, which was dismissed and even appeal preferred against the said decree was dismissed on 4.10.2014. The present suit by the plaintiff was instituted at the instance of Ishawari Devi to harass the defendant. The plaintiff was in possession of only one room measuring 12'10" X 14', a kitchen 5'x6' and a bathroom 3'x3' on the first floor, as a licensee.

Upon consideration of the matter in issue and evidence on record, both the courts concurrently concluded that claim set out by the

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plaintiff that he was in possession of a portion of the house as owner on the basis of partition was vitiated, in his cross-examination, for the documents (Ex.DA to Ex.DC), proved on record, showed that defendant was an absolute owner of the said house that included the disputed portion. For, defendant set up an absolute title in himself and denied if the plaintiff had any right, title or interest in the portion in his possession, the plaintiff ought to have sought a declaration qua ownership/title, though he filed a suit simplicitor for injunction.

As regards partition, the evidence on record rather proved that plaintiff was in occupation of one room measuring 12'10"x14', a kitchen 5'x6' and a bathroom 3'x3' on the first floor, as a licensee. The fact that he filed the present suit was proof enough that licence to occupy the disputed portion was revoked by the defendant, which is why the plaintiff conceded in his statement that he was actually residing in a house situated at Ganga Vihar, which was 3 kilometers away from the suit property. No cogent evidence was led by the plaintiff to show if he was still in occupation of the disputed portion. His claim that he was owner in possession of the disputed portion, pursuant to a family partition affected between him and his brothers, remained unsubstantiated for lack of evidence. Therefore, once the plaintiff merely occupied the disputed portion at the pleasure and mercy of the defendant, upon revocation of licence, his possession over the disputed portion was illegal and unauthorised. Thus, in the given situation, he could not claim injunction against a true owner. Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

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No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

September 27, 2019
AK Sharma

Whether speaking / reasoned:	YES
Whether Reportable:	YES/NO