

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

RSA No.615 of 2017 (O&M)

Date of decision : 25.02.2019

Vikas

...Appellant

Versus

Sushma Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Surinder Sharma, Advocate for the appellant.

Mr. Vijay Lath, 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.

Defendant-appellant although claims that he is co-owner of the property in question, however, he failed to prove the same fact. Learned counsel for the appellant also admits that there is no cogent evidence to prove that the defendant or his predecessors were co-owners in the property. However, learned counsel for the appellant has submitted that the property is in the name of one Darshana Kumari and without seeking declaration, plaintiff cannot claim relief of mandatory injunction.

Parties are closely related. Defendant-Vikas is son of Smt. Avinash who is real sister of Lajpat Rai Sharma, the plaintiff. It is claimed by the plaintiff that the defendant-appellant was permitted to occupy as a

licencee and licence has been terminated, therefore, they are entitled for decree for mandatory injunction. The defendant claimed that he is co-owner and in the alternative claimed that he has become owner by way of adverse possession.

In the present case, since the suit was for mandatory injunction, the Courts framed following issues:-

- “1. Whether the plaintiff is entitled for mandatory injunction? OPP*
- 2. Whether the plaintiff is entitled to recovery of damages, if yes, for what amount? OPP*
- 3. Whether the present suit is not maintainable in the present form? OPD*
- 4. Whether the plaintiff has not come to the Court with clean hands? OPD*
- 5. Whether the present suit has not been properly valued for the purpose of jurisdiction and Court fees? OPD*
- 6. Whether the present suit is barred by limitation? OPD*
- 7. Whether the present suit is bad for non joinder of necessary parties? OPD*
- 8. Relief.”*

Thus, the issue with regard to title of the property was neither framed nor any argument on this aspect was raised before the Courts below.

It is not in dispute that the defendant-appellant has failed to prove any right, title or interest in the property.

The argument of the learned counsel for the appellant that since Darshana Kumari is recorded as owner, thus, in absence of relief of declaration, suit was not maintainable, does not have substance because the dispute in the present case is between licensor and licensee. Ownership is

not in question. Still further, it is the case of the defendant-appellant himself that the property was owned by Sh. Shambhu Nath Sharma who was father of Lajpat Rai Sharma. Thus, the ownership of the family is not in dispute. Although, it has been pleaded in the written statement that the defendant is co-owner, however, no cogent evidence to that effect has been proved.

Learned counsel for the appellant has also filed an application bearing CM No.1326-C of 2017 under Order 41 Rule 27 CPC for permission to lead additional evidence and to place on record a copy of judgment dated 11.09.2014 given in a case filed against Rajinder Parshad. It may be noted that the defendant-appellant is not claiming any right under Rajinder Prashad, therefore, the aforesaid judgment does not help or advance the case of the defendant-appellant. Once it is established that the defendant has no right, title or interest, he cannot be permitted to challenge the maintainability of the suit on the ground that Darshana Kumari is recorded as owner.

Still further, it has come in evidence that the defendant-appellant has already vacated the premises but is keeping the property in his possession by placing certain goods in the rooms keeping in view the close relations between the parties. Once the defendant is not now residing in the aforesaid premises, therefore, the defendant-appellant even does not have any equity in his favour.

It has also come in evidence that there was dispute between the parties and a compromise was arrived at on 29.11.2008 Ex.P6 on the file which was also signed by mother of the defendant-appellant. According to which, possession was agreed to be delivered to the legal heirs of Lajpat Rai

Sharma.

In view of the aforesaid, there is no ground to interfere with the judgment passed by the learned First Appellate Court.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

25.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No