

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

RSA No.668 of 2020 (O&M)

DATE OF DECISION: November 18, 2021

Jit Singh

...Appellant

VERSUS

Prithi Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Padam Kant Dwivedi, Advocate, for the appellant.

Ms. Ekta Thakur, Advocate, for the respondent.

SUDHIR MITTAL, J.

This regular second appeal arises out of a suit for mandatory injunction filed by the respondent directing the defendant to vacate the suit property. The suit has been decreed and first appeal filed by the defendant along with cross objections preferred by the plaintiff have been dismissed. Thus, a decree for mandatory injunction has been passed directing the defendant to vacate the suit property and handover vacant possession. He has further been directed to pay mesne profits amounting to Rs.99,000/- along with future interest @ 6% per annum till the date of realization.

The case set up by the plaintiff was that a plot was allotted to him in the year 1984 on which a house was constructed by him about 6-7 years later. Initially, the property was rented out as the plaintiff was residing in accommodation provided to him by his employer i.e. Panjab

University. Thereafter, the defendant (being blood brother) was permitted to reside therein as licensee till the plaintiff retired from service. The last instalment was paid in the year 2012. The water & electricity meter were in his name. In the year 2013, differences arose with the defendant as he did not permit the plaintiff to construct a first floor. He retired on 30.08.2014 and requested the defendant to handover possession which was refused. Licence was revoked on 15.09.2014 and suit was filed on 07.10.2014.

In his written statement, the defendant claimed title to the suit property. It was stated that although application for allotment of plot was submitted in the name of the plaintiff, all instalments had been paid by him. The receipts evidencing payment of instalments were handedover to the plaintiff in good faith. Construction was also raised by the defendant. In the alternative, it was pleaded that title had been acquired by way of adverse possession. A meeting had been held with relations wherein the plaintiff had agreed to sell the property on payment of Rs.13.5 lacs. Receipt of notice revoking the licence was denied.

Learned counsel for the appellant has argued that the defendant-appellant had proved raising of construction by him. For this purpose reliance has been placed upon statements of DW-2 Mohinder Singh, another brother of the parties and DW-3-Kela Rani, a neighbour. Cross-examination of PW-1 (plaintiff) has also been referred to in this regard as the plaintiff admitted therein that he did not have documents showing that construction had been raised by him. Thus, permanent construction having been raised by the defendant, the licence had become irrevocable and the suit could not have been decreed. Reliance is placed upon ***Ram Sarup Gupta (dead) by LRs vs. Bishun Narain Inter College***

and others, AIR 1987 (SC) 1242. It has also been argued that suit for mandatory injunction was not maintainable because question of title was involved and accordingly, a suit for possession should have been filed. For this purpose, reliance has been placed upon *Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs and others, AIR 2008 (SC) 2033*.

Finally, it has been argued that all requirements of proving adverse possession stood fulfilled and thus, the Courts below were in error in decreeing the suit.

Counsel for the respondent-plaintiff has submitted that the evidence on record shows that the property in dispute was allotted to the plaintiff and all instalments were paid by him. Title was admitted and thus, there was no dispute regarding the same. Being a licensee, the defendant could have been directed to handover vacant possession by way of mandatory injunction. Adverse possession was not established as the defendant has not proved the starting point of his alleged adverse possession. Long possession by itself does not establish adverse possession. Reliance has been placed upon *Mallikarjunaiah vs. Nanjaiah and others, 2019(3) RCR (Civil) 12*.

First and foremost, I will examine the argument regarding maintainability of the suit for mandatory injunction. As noticed earlier, an argument has been raised on behalf of the defendant-appellant that licence had become irrevocable on account of construction having been raised by the defendant. This argument presupposes that to begin with the defendant came into possession of the suit property as a licensee. Section 52 of the Easements Act, 1882 (hereinafter referred to as the Act) defines 'licence'. A person is said to grant a licence when he gives another a right to do

something upon immovable property which would be unlawful in the absence of such right and such right does not amount to an easement or interest in the property. Section 61 of the Act states that a licence could be revoked expressly or impliedly. In this case, the plaintiff revoked the licence expressly and upon such revocation, the right given to the defendant to occupy the property came to an end. Thus, an obligation was imposed upon him to remove his possession. Section 39 of the Specific Relief Act, 1963 states that a mandatory injunction can be issued to prevent the breach of an obligation and a Court has the authority to enforce the same. Despite his obligation to vacate the possession, the defendant did not do so and thus, suit for mandatory injunction was maintainable. Title was denied half-heartedly as is evident from the pleadings in the written statement. No reason has been given in the written statement for making an application for the plot in the name of the plaintiff. Reason for handing over receipts of payment of instalments by the defendant has also not been mentioned. Such an averment is not believable as it militates against the conduct of a person of ordinary prudence and therefore, a finding is being returned that denial of title was only half-hearted. In fact, pleading of adverse possession amounts to admission of title of the plaintiff and thus, the judgment in *Anathula Sudhakar (supra)* does not apply to this case. Thus, the argument that the suit was not maintainable, is rejected.

The next argument is regarding the licence having become irrevocable. Section 60(b) of the Act states that a licence becomes irrevocable where a licensee acting upon the licence has executed a work of permanent character and incurred expenses.

In *Ram Sarup Gupta (supra)*, this provision has been

interpreted to mean that the construction of permanent nature should have been executed acting upon the licence. Assuming that the defendant has proved raising of construction by him, he has not pleaded that said construction was raised, acting upon the licence. In fact, the licence has been denied. Thus, question of applicability of Section 60(b) of the Act does not arise. This argument is also accordingly rejected.

Lastly, it has to be seen whether the defendant has perfected his title through prescription. Both the Courts below have returned concurrent findings of fact that the defendant has not pleaded or proved the starting point of his alleged hostile possession. Although, his case is that he raised construction in the year 1983, this plea is not supported by the evidence produced by him. DW-2 Mohinder Singh has stated in his cross examination that he does not know the date or month when the construction was started by him. DW-3-Kela Rani has stated that the construction was raised 30-35 years back but she cannot be said to be a reliable witness. Her house is situated adjacent to the suit property and she appears to be an interested witness. She is prone to making unsubstantiated statements. This is revealed from her cross-examination, wherein, she has stated that she had heard that the plot had been allotted to the defendant. In fact the same was allotted to the plaintiff as has been proved on the record. Since, the defendant has failed to prove the starting point of the hostile nature of his possession, it is not clear when the period of limitation of 12 years prescribed by Article 65 of the Limitation Act, 1963 started. It is now settled that the defendant has to lead evidence showing that his possession had become hostile to the interests of the plaintiff more than 12 years before the filing of the suit. Having failed to do so, this argument also deserves to

be rejected.

In view of the above, the appeal has no merit and is dismissed.

Since the main case stands dismissed, the pending misc. application(s) also stand disposed of.

November 18, 2021
Ankur

(SUDHIR MITTAL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>