

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A No. 432 of 2021(O&M)

Date of Decision:10.08.2021

Gian Chand and another

.....Appellants

Versus

Brij Lal

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Chand Ram Olla, Advocate
for the appellants.

LISA GILL, J(Oral).

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Appellant-defendants, have filed this appeal being aggrieved of judgment and decree dated 25.07.2017, passed by the learned Civil Judge (Jr. Division), Ambala, as well as judgment and decree dated 23.03.2021, passed by the learned Additional District Judge, Ambala, whereby suit filed by the plaintiff-respondent, has been decreed.

Brief facts necessary for adjudication of the case are that respondent-plaintiff filed a suit for possession by way of mandatory injunction directing the appellant-defendants to handover vacant possession of the suit property as detailed in the plaint and for grant of mesne profit at the rate of Rs. 2500/- per month for unauthorized use and occupation of the said property. It is pleaded that plaintiff was the owner of the suit property, which was purchased by him vide registered sale deed dated 13.04.1987. His sister namely Maina Devi @ Premwati used to live in a temple at Ambala City along with her two unmarried daughters. Defendants are the sons of his

sister (since deceased). Plaintiff's sister could not get her daughters married as they used to reside in the temple. Premwati @ Maina along with two other sisters namely Tulsi Devi and Bhagwati Devi (since dead) approached the plaintiff and asked him to handover keys of the house in question to Premwati @ Maina Devi with an assurance that after the marriage of both the daughters, she would handover vacant possession of the house to him.

It is further pleaded that the appellant-defendants along with their parents started residing in the suit property as licensee with plaintiff's permission. Licence fee was waived by the plaintiff during lifetime of his sister. After marriage of daughters of his sister, plaintiff asked the defendants to vacate the house, but they postponed the matter on one pretext or the other and behavior of the defendants became non-cooperative towards him. It is further pleaded that he sent a legal notice to the defendants for termination of the license, but defendants failed to pay a single penny to him towards use and occupation of the house in question. Plaintiff lodged a complaint with the police against the defendants, wherein a compromise was arrived at between the parties and defendants agreed to vacate the house in question by 26.12.2011. It is further pleaded that the defendants did not vacate the house, rather they filed a civil suit for permanent injunction on 24.12.2011 just two days before the date fixed for vacation of the house in question. Plaintiff issued a legal notice dated 05.01.2012, terminating the licence of the defendants. It is further pleaded that defendants were also liable to pay *mesne* profits at the rate of 2500/- per month for unauthorized use and occupation of the house from the date of termination of licence till actual possession was handed over to him. Accordingly, suit for possession by way of mandatory injunction was filed.

Appellant-defendants contested the suit while taking various

preliminary objections. Defendant no.2-Prem Chand, died during the pendency of the suit and defendant no.1 being his brother, was impleaded as legal heir of deceased vide order dated 30.11.2015. It is pleaded that the house in question was gifted to their mother by the plaintiff out of love and affection. Possession of the house in question was also delivered by the plaintiff to their mother without any condition. It is further pleaded that after death of their parents, they continued to remain in possession of the house in question as its owners. It was denied that they were in possession of the house in question as licensee. After the death of their mother, plaintiff became dishonest. It is pleaded that the police obtained their signatures upon blank papers and converted the same into alleged compromise. Dismissal of the suit was prayed for.

Replication was not filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to the possession by way of mandatory injunction as prayed for him?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form?OPD
3. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, concluded that the plaintiff had successfully proved his case and thus decree for possession of the house in question was issued along with mesne profits at the rate of Rs.25,00/- per month for the unauthorized use and occupation of the premises along with *pendente lite* and future interest at the rate of 6% per annum from the date of filing of the suit till the date of actual delivery of possession.

Appeal filed by the present appellants was dismissed by the

learned Additional District Judge, Ambala, vide judgement and decree dated 23.03.2021 with the modification that the plaintiff was held entitled to mesne profit at the rate of Rs.1000/- instead of Rs.2500/- per month along with future interest at the rate of 6% per annum.

Aggrieved therefrom, present appeal has been filed by the appellants.

Learned counsel for the appellants vehemently argues that the residential house in question was in-fact gifted to the mother of the appellants by the plaintiff since over 35 years ago. Therefore, there is no question of the appellants or their mother being a licensee of the plaintiff. Moreover, there is no requirement of registration of any gift deed in respect to a residential house/property within the *lal lakir* of the village. He relies upon judgement of the Hon'ble Supreme Court in **Nazir Mohammad Vs. J. Kamala and others, 2020 (3) R.C.R (Civil) 684** to submit that possession of the appellants was adverse and judgements and decrees have been incorrectly passed and that the plaintiff was unable to prove permissive possession of the appellant/defendants. It is thus prayed that present appeal be allowed and judgements and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the plaintiff-respondent be dismissed throughout.

I have heard learned counsel for the appellants and have gone through the file with his assistance, but I do not find any ground whatsoever to interfere in the concurrent findings which have been returned by the learned Courts below after proper appreciation of the evidence on record for the reasons as delineated hereinafter.

It is a matter of record that the argument/grounds sought to be raised before me today, are not in consonance with the written statement

filed on behalf of the appellants. Copy of written statement circulated on the whatsapp group today, has been perused. Perusal of the written statement filed on behalf of the appellant-Gian Chand reveals that specific plea taken by the defendant-appellants is that the suit is not maintainable as property in question was gifted to the mother of the said defendant by the plaintiff. Appellants mother was the sister of the plaintiff and it is denied that appellants are licensee/s of the plaintiff. They claim to be owners on the basis of gift of the residential property by the plaintiff, to his sister. Judgement of the Hon'ble Supreme Court in **Nazir Mohammad's case (Supra)**, is clearly not applicable in the factual matrix of this case. There is no question of adverse possession being presumed in the present case.

Admittedly, appellants themselves claim to be in permissive possession of the suit property, inasmuch as they claim to be in possession on account of a gift made by the plaintiff to their mother. Argument raised by learned counsel for the appellants that the plaintiff failed to prove permissive possession, is not only contrary to the defendants stand but is also belied by the record. It is relevant to refer to the testimony of DW-2-Ved Parkash, who in his cross-examination has corroborated the plaintiff's claim that the house in question was permitted by the plaintiff to be used by his sister for the purpose of her residence and for performing marriage of her daughters as plaintiff's sister at that time was residing in a temple and it was difficult to get the daughters married in that situation. DW-2 has further admitted copy of compromise dated 26.05.2010, placed on record as Mark-10. It is to be noted that the said compromise was effected between the appellants-Gyan Chand and Prem Chand (now represented by his LRs) and the plaintiff. Defendant-Gyan Chand has admitted his signatures and signatures of Prem Chand on the said compromise, though a specific stand

has been taken that his signatures were obtained forcibly. Appellant-Gyan Chand while testifying as DW-1, has admitted that he never complained or raised any objection regarding such forcible act of obtaining his signatures on the said compromise. DW-1 has admitted receipt of legal notice, Ex.P-3 i.e., notice regarding termination of licence as well. It is further not denied that date for vacation of the house in question was stipulated as 26.12.2011 in the compromise, but suit for declaration and stay was filed by DW-1 on 24.11.2012. It is further a matter of record that the house in question was purchased by the plaintiff in the year 1987 and the plaintiff is reflected as its owner as per Ex.P-2. DW-3-Amar Singh, has admitted the same as well as signatures on the site plan, Ex.P-1.

It is relevant to note at this stage that DW-2-Ved Parkash has admitted that the plaintiff permitted the mother of the appellants to use the house in question to facilitate marriage of her daughters. I also do not find any merit in the argument raised by learned counsel for the appellants to the effect that the plaintiff is not entitled to *mesne* profits at the rate of Rs. 1000/- for unauthorized use and occupation of the house in question since the date of termination of their licensee till actual delivery of possession along with *pendente lite* and future interest at the rate of 6% per annum from the date of filing of the suit till actual delivery of possession of the house in question. Reference by learned counsel for the appellants to cross-examination of PW-1-Brij Lal, to the effect that Prem Chand used to learn work at his shop and was not given any salary, therefore the same should be set off qua the *mesne* profits, if any, does not come to the aid of the appellants. Apart from the fact that there is no such pleading, this argument is contrary to the stand being otherwise taken by the appellants. The quantum of *mesne* profits in any case has been reduced to more than half by

the learned Additional District Judge, Ambala and there is no ground for interference therein. Therefore, both the learned Courts below have rightly decreed the suit filed by the plaintiff-respondent to the extent as mentioned above after proper appreciation of the evidence on record.

Learned counsel for the appellants, is unable to point out any question of law much less a substantial question of law which may be involved for consideration in this regular second appeal. Both the learned Courts below, after proper appreciation and consideration of the evidence on record have returned concurrent findings vide impugned judgements, which call for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 25.07.2017 and 23.03.2021 passed by the learned Civil Judge (Jr. Division) Ambala and learned Additional District Judge, Ambala, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

10.08.2021

s.khan

**[LISA GILL]
Judge**

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.