

\$~7

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 10th December, 2021

+ **RSA 60/2021 & CM APPL. 24333/2021**

JOLLY KHANNA & ANR.

..... Appellants

Through: Mr. Triloki Pandit, Advocate.
(M:9810569536)

versus

POOJA KHANNA & ORS.

..... Respondents

Through: Mr. Rohit Naagpal, Mr. Akarshan
Bhardwaj and Mr. Dipanshu Gaba,
Advocates for R-1 to 4.
(M:9873730191)

Ms. Shikha Sapra and Mr.
Kamaldeep, Advocates for R-5.
(M:9818055059, 9990950303)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.
2. The present second appeal arises out of the judgment dated 15th April, 2021 passed by the ADJ-07, Central District, Tis Hazari Courts, Delhi (*hereinafter "Appellate Court"*) in ***RCA No.19/2019*** in ***Pooja Khanna & Ors. v. Ashwini Khanna & Ors.*** By the impugned judgment and order, the Appellate Court has modified the judgement dated 2nd March, 2019 passed by the Ld. Civil Judge-05 (Central District), Tis Hazari Courts, Delhi (*hereinafter "Trial Court"*) in ***CS No.94303/16*** titled ***Pooja Khanna v. Ashwini Khanna.***

3. The background of the case is that a suit for perpetual and mandatory injunction, and for rendition of accounts was filed by the family of Late Shri Vijay Kumar Khanna against the Defendant No.1- Shri Ashwini Khanna, and Defendant Nos.2-3 who are the family members of Late Shri Manohar Lal Khanna. Shri Vijay Kumar Khanna, Shri Manohar Lal Khanna and Shri Ashwini Khanna are brothers, and sons of Late Shri Mangat Ram Khanna. Shri Vijay Khanna and Shri Manohar Lal Khanna have passed away, and are survived by their respective families. The reliefs sought in the suit are:

“a. A decree for perpetual injunction be passed restraining the Defendants their agents, representatives, assignees etc. from selling, assigning or creating any third party interest in respect of Shop No. 8, Gali Jugal Kishore (Gali Ghante Wali), Chandni Chowk, Ilaga No. A, Delhi-110006 and in respect of residential property bearing No. 5672, Gali No.2, New Chandrawal, Kolhaopur, Delhi and in respect of two godowns No. 9 & 10 in property bearing No.1875. Haveli Jugal Kishore, (Gali Ghante-Wali) Chandni Chowk, Ilaga No.4, Delhi-110006 permanently; and

b. A decree for mandatory injunction be passed directing the Defendants their agents, representatives, assignees etc. from removing the locks installed at Shop No.8, Gali Jugal Kishon (Gali Ghante Wali), Chandni Chowk, Ilaga No.4, Delhi-110006 and at Shop No. 14 Gali Jugal Kishore (Gali Ghante-Wali), Chandni Chowk, Ilaga No.4, Delhi-110006 which was being run under the name and style of M/s. Manohar Lal Vijay Kumar and to quit therefrom, and

c. A decree for rendition of accounts be passed directing the Defendants to render the true and correct accounts of the business run under the name

and style of M/s. Manohar Lal Vijay Kumar and M/s. Khanna Trading Company by appointment of a Local Commissioner to go into the accounts and directing the Defendants to produce all the relevant accounts etc. and decree be thereafter passed for whatever amount the Plaintiffs are found entitled on the rendition of the said accounts;and

d. The Plaintiff be also awarded the costs of the suit; and

e. Any other further order or relief which this Hon'ble Court deems fit and proper be also awarded to the Plaintiffs and against the Defendants in the peculiar facts and circumstances of this case.”

4. The suit related to the following four properties:

- (i) Shop. No.8, Gali Jugal Kishore (Gali Ghante Vale), Chandni Chowk, Illaka No.4, Delhi-110006. (“*Shop No.8*”).
- (ii) Shop No.14, Gali Jugal Kishore (Gali Ghante Vale), Chandni Chowk, Illaka No.4, Delhi-110006. (“*Shop No.14*”).
- (iii) Residential Property bearing no.5672-73, Gali No.2, New Chandrawal, Kolhapur Road, Delhi (“*Property bearing No.5672*”).
- (iv) Two Godowns No. 9 & 10 in Property bearing No.1875, Haveli, Jugal Kishore (Gali Ghante Vale, Chandni Chowk, Illaka No.4, Delhi-110006. (“*Godown No. 9 & 10*”).

5. In the suit, the following issues were framed.

“(i) Whether the present suit has been valued

correctly for the purpose of Court fees and jurisdiction? OPP

(ii) Whether the present suit is filed without any cause of action against the defendant no.1? OPP

(iii) Whether the plaintiff is entitled for perpetual injunction as prayed in para A of the prayer clause? OPP

(iv) Whether the plaintiff is entitled for mandatory injunction as prayed in para B of the prayer clause? OPP

(v) Whether the plaintiff is entitled for the decree of rendition of accounts? OPP”

Judgement of the Trial Court:

6. Firstly, Issue No.2 was decided by the Trial Court and it was held that the suit discloses a cause of action against the Defendants. On Issue No.1, the Trial Court observed that the Plaintiffs had sought relief of perpetual injunction against four properties, but have paid the court fees for only one relief. Thus, in respect of Issue No.1, it was held that the Plaintiffs ought to have prayed for the possession of Shop Nos. 8 and 14 and valued the relief accordingly, but instead of doing the same, the Plaintiffs have sought the relief of possession by way of injunction which is not permissible in law. Accordingly, the Trial Court held that the suit was improperly valued and the Issue No.1 was decided against the Plaintiffs and in favour of the Defendants.

7. On Issue No.3 in respect of perpetual injunction, the Trial Court came to the following conclusion in respect of the four properties:

- (i) **Shop. No.8** – Mutation is not proof of ownership. The sale deed shows that Late Sh. Vijay Kumar Khanna was the owner. Injunction was however refused on the ground that there was no threat of

alienation by the Defendants.

(iii) **Property bearing No.5672** – Late Vijay Kumar Khanna was not the sole and exclusive owner of this property. He was joint owners along with Ashwani Khanna. There is no threat of alienation. Defendants 2 and 3 are also claiming rights. Thus, declaration ought to have been sought. Perpetual injunction was refused.

(iv) **Godown No. 9 & 10** - Ownership of these godowns not proved. There is also no threat of alienation. Hence injunction refused.

Thus, Issue No.3 was decided against the Plaintiffs and in favour of the Defendants.

8. Insofar as the Issue No.4 in respect of mandatory injunction is concerned, in view of the decision in Issue No.3, the Trial Court held that there was a partnership business, which was originally in the name of Mr. Manohar Lal Khanna and Mr. Vijay Kumar Khanna. The plaintiff has also put her own additional lock on the Shop no.8 and shop no. 14 as also in the two godowns. Since the firm was a partnership firm and not a sole proprietary concern of Vijay Kumar Khanna, the stocks lying in the shops/godowns cannot be exclusively belonging to the Plaintiff. The partnership business was being run in shop no.14. Thus, the defendants who are the legal heirs of Late Sh. Manohar Lal Khanna cannot be directed to remove their locks and the issue was decided against the Plaintiffs and in favour of the Defendants.

9. Insofar as Issue No.5 is concerned, the relief of rendition of accounts was also rejected on the ground that, since M/s. Khanna Trading Company had ceased to do business in 1984 and only Mr. Vijay Kumar Khanna was the surviving partner, the accounts cannot be sought from the Defendants.

Judgement of the Appellate Court:

10. Before the Appellate Court, the Plaintiffs gave up the relief sought qua Shop No.14 and Godown Nos. 9 & 10. The suit, thus, survived only in respect of the properties at serial Nos.(i) & (iii) i.e., Shop No.8 and the Residential property bearing No.5672. Rendition of accounts was also given up. The order dated 31st March 2021 in **RCA No.19/2019** recorded the statement of the counsel for the Plaintiffs to the following effect:

“The ld. counsel for the appellants submits that the appellants are confining their claims in the appeal for Shop no. 8 and Property no. 5672 for the reliefs of permanent and mandatory injunction. It is further submitted that without prejudice to the rights of appellants, the appellants are not claiming any other reliefs including the relief of rendition of accounts as sought in the plaint/ appeal. The separate statement of the ld. counsel for appellants recorded to such effect. The ld. counsel for appellants has also filed physical copy of the written statement.

Copy already stated to have supplied.

Put up for clarifications/ judgment on 14.04.2021.”

11. The Appellate Court, after perusing the entire record and facts in this case, held as under in respect of each of the issues:

Issue no.5: The relief of rendition of accounts has been given up by the Plaintiffs, as recorded in Order dated 31st March, 2021.

Issue no.2: The Trial Court has already held that the suit discloses a cause of action. This finding has not been assailed by the Defendants.

Issue no.3: On Issue No.3, the Appellate Court found that the Trial Court had already held that Shri Vijay Kumar Khanna was the owner of Shop No.8. The Defendants had argued that they never tried to create third party

interest, and on this ground only, the Trial Court has not granted relief in favour of the Plaintiffs. This finding of the Trial Court did not find favour by the Appellate Court. Since the property was actually purchased in the name of Mr. Vijay Kumar Khanna, the Defendants having denied their rights in the property, it is only the stocks of the Defendants which were lying in the said property. Since the Defendants have put their locks in the property and they do not have any right, title or interest in the said property, the mandatory injunction in respect of Shop No.8 was granted by the Appellate Court.

12. Insofar as the property bearing No.5672 is concerned, the Defendant No.1-Ashwini Khanna and Vijay Kumar Khanna were the owners of the said property. The Sale Deed dated 14th June, 1989 was considered by the Appellate Court. Thus, the Appellate Court held that there is no material to show that property bearing No.5672 exclusively belongs to Mr. Vijay Kumar Khanna. However, the relief of permanent injunction was not granted. This finding of the Trial Court, which was based on the lack of a declaratory prayer on behalf of the Plaintiffs, did not find favour by the Appellate Court. The Appellate Court in this regard held as under:

“Now, as far as the property bearing no. 5672 is concerned, the record reveals that defendant no.1 and Sh. Vijay Kumar Khanna were owners of the said property. No doubt, in the plaint, the plaintiffs have alleged that even the said property bearing no. 5672 was purchased by Sh. Vijay Kumar Khanna, but defendant no.1 got his name mischievously included in the property documents, however, the plaintiffs have utterly failed to prove on record that the defendant no.1 got his name included in the Sale Deed dated 14.06.1989. The

said property was admittedly in the names of Sh. Vijay Kumar Khanna and defendant no.1 Le. Sh. Ashwani Kumar Khanna. The Sale Deed dated 14.06.1989 (Ex.PW1/D1/1) proves the said fact. The Ld. Trial Court has rightly held that there is no material to show that property bearing no. 5672 exclusively belongs to Sh. Vijay Kumar Khanna. The relief of permanent injunction was not granted by Ld. Trial Court in respect of property bearing no. 5672 on the ground that defendant no.1 is having one half undivided share in the property and further there is no allegation in the plaint to the effect that any of the defendants have ever threatened or attempted to alienate the said property.

The Defendants no. 2 and 3 have disputed that the property bearing no. 5672 was owned by Sh. Vijay Kumar Khanna and defendant no.1 alone. The Ld. Trial Court has come to the conclusion that in view of the contention raised by defendants no. 2 and 3, the plaintiffs ought to have sought declaration qua the title of Sh. Vijay Kumar Khanna owner of the aforesaid property alongwith consequential relief of injunction regarding the non-alienation of the aforesaid property and the plaintiffs have failed to do so.

In my considered view, the observation of Ld. Trial Court to such effect was not called for. The plaintiffs, including defendant no.1, have proved on record the Sale Deed dated 14.06.1989. If, the LRs of Sh. Manohar Lal Khanna were claiming the right in the said property contrary to the Sale Deed dated 14.06.1989, then, the said LRs ought to have filed the suit for declaration claiming their own independent right in the said property.

The Ld. Trial Court has also not correctly appreciated the facts. The Ld. Trial Court has failed to take note of the fact that defendants No.2

and 3 are in possession of the part of the said property. The LRs of Sh. Manohar Lal Khanna are claiming their right in the property bearing no. 5672 and definitely, the plaintiffs may suffer irreparable loss in case the LRs of Sh. Manohar Lal Khanna will create any right in the property bearing no. 5672.

The Ld. Trial Court has, no doubt, come to the conclusion that defendant no.1 cannot be restrained from selling the undivided share in the property bearing no. 5672, however, the Ld. Trial Court has failed to consider that in the property bearing no. 5672, the plaintiffs were also having one half undivided share and defendant no.1 or for that matter, the defendants no. 2 and 3 are not entitled to create any third party interest in the property bearing no. 5672, specifically, as far as the one half share of plaintiffs is concerned.”

13. Finally, the Appellate Court held that the findings of the Trial Court in respect of Shop No.8 and property bearing No.5672 are not correct. In view thereof, the Appellate Court modified the Trial Court's judgement in respect of Issue No.3. Injunction was granted *qua* Shop No.8 and property bearing No.5672.

14. **Issue no.4:** The Appellate Court has held that there were multiple locks, which had been placed by the parties in question on the suit properties. The stocks which are lying locked in Shop No.8 are more than eighteen years old. Since there is no value of the said stocks, no documents were also produced by the Defendants indicating that either of the Defendants were partners in M/s. Khanna Trading Company, after the death of Shri Manohar Lal Khanna. The Appellate Court also held that the Shop No.8 was the exclusive property of Mr. Vijay Kumar Khanna and after his

death, the Plaintiffs are the owners of the said property. None of the Defendants have any right, title and interest in the said property.

15. Under such circumstances, the Appellate Court permitted the Plaintiffs to re-value the suit and deposit the proper court fees. The operative portion of the impugned order dated 15th April, 2021 passed by the Appellate Court reads as under:

“(i) A decree of permanent injunction is passed in favour of the Plaintiffs and against the defendants thereby directing the defendants, their agents, representatives, a~signs etc. from selling, assigning or creating. any third party interest in property bearing Shop No.8, Gali Jugal Kishore (Gali Ghante Wali), Chandni Chowk, Illaka No.4, Delhi-110006 and also in respect of residential property bearing No.5672, Gali No.2, New Chandrawal, Kohlapur, Delhi.

(ii) A decree of mandatory injunction is also passed in favour of the plaintiffs and against defendants thereby the defendants are directed to remove their lock(s) including the chain(s), if any, on the Shop No.8, Gali Jugal Kishore (Gali Ghante Wali), Chandni Chowk, Illaka No.4, Delhi-110006i within a period of 15 days from passing of this Judgment. After removing the locks and chain(s) by defendants from the said shop, the plaintiffs/appellants will open their locks only after giving at-least one week's notice to defendants no.2 and 3 and putting them in notice, the date and time, when the Plaintiffs/Appellants will open their locks so that in case, they wanted to take the stocks lying therein, then, they may take the same in their custody. If, the said Defendants no.2 and 3 do not visit on the desired date and time, then, the Plaintiffs/Appellants will be at liberty to take the custody of the stocks lying therein and to dispose of

the same in the manner they like.””

16. The substantial questions of law, which the Ld. Counsel for the Appellant wishes to urge, have been placed before this Court. The first question of law is in respect of rendition of accounts. This relief has already been given up by the Plaintiffs, as recorded in the Appellate Court's order dated 31st March, 2021.

17. Insofar the question of law in respect of grant of possession of the suit properties is concerned, the question of law that is urged before this Court is whether, in the garb of relief of mandatory injunction, the relief of possession could have been granted to the Plaintiffs. This issue has been settled by the Supreme Court in the judgment of ***Sant Lal Jain v. Avtar Singh***, [(1985) 2 SCC 332]. The relevant portion of the said judgment is set out below:

“7. In the present case it has not been shown to us that the appellant had come to the court with the suit for mandatory injunction after any considerable delay which will disentitle him to the discretionary relief. Even if there was some delay, we think that in a case of this kind attempt should be made to avoid multiplicity of suits and the licensor should not be driven to file another round of suit with all the attendant delay, trouble and expense. The suit is in effect one for possession though couched in the form of a suit for mandatory injunction as what would be given to the plaintiff in case he succeeds is possession of the property to which he may be found to be entitled. therefore, we are of the opinion that the appellant should not be denied relief merely because he had couched the plaint in the form of a suit for mandatory injunction.”

18. The judgment in ***Sant Lal Jain (supra)*** which has also been

considered by the Id. Single Judge of this Court in ***Mulk Raj Khullar v. Anil Kapur & Ors. [CS (OS) No.1855/2011 decided on 3rd October, 2013]***. The relevant paragraphs of the said judgment are set out below:

*“14. Reference may be had to the judgment of the Hon’ble Supreme Court in the case of **Sant Lal Jain versus Avtar Singh (supra)** where the Hon’ble Supreme Court approved the judgment of the High Court in the case of **Milka Singh vs Diana, AIR 1964 J&K 99** and held as follows:-*

“6. In Milkha Singh v. Diana, it has been observed that the principle once a licensee always a licensee would apply to all kinds of licences and that it cannot be said that the moment the licence is terminated, the licensee’s possession becomes that of a trespasser. In that case, one of us (Murtaza Fazal Ali, J. as he then was) speaking for the Division Bench has observed:

“After the termination of licence, the licensee is under a clear obligation to surrender his possession to the owner and if he fails to do so, we do not see any reason why the licensee cannot be compelled to discharge this obligation by way of a mandatory injunction under s. 55 of the Specific Relief Act. We might further mention that even under English law a suit for injunction to evict a licensee has always been held to be maintainable. where a licensor approaches the court for an injunction within a reasonable time after the licence is terminated, he is entitled to an injunction. On the other hand, if the licensor causes huge delay the court may refuse the discretion to grant an injunction on the

ground that the licensor had not been diligent and in that case the licensor will have to bring a suit for possession which will be governed by Section 7(v) of the Court Fees Act."

"8. The respondent was a licensee, and he must be deemed to be always a licensee. It is not open to him, during the subsistence of the licence or in the suit for recovery of possession of the property instituted after the revocation of the licence to set up title to the property in himself or anyone else. It is his plain duty to surrender possession of the property as a licensee and seek his remedy separately in case he has acquired title to property subsequently through some other person."

The above judgment has been cited with approval by the Supreme Court in the case of Joseph Severance and Others versus Benny Mathew and Others (supra). The Hon'ble Supreme Court in the relevant portion of para 7 of the judgment held as under: "....Strictly speaking the question is not a substantial question of law, but one whose adjudication would depend upon factual adjudication of the issue relating to reasonableness of time. The correct position in law is that the licensee may be the actual occupant but the licensor is the person having control or possession of the property through his licensee even after the termination of the licence. Licensee may have to continue to be in occupation of the premises for some time to wind up the business, if any. In such a case licensee cannot be treated as a trespasser. It would depend upon the facts of the particular case. But there may be cases where after termination or revocation of the licence the licensor does not take prompt action to evict licensee

from the premises. In such an event the ex-licensee may be treated as a trespasser and the licensee will have to sue for recovery of possession. There can be no doubt that there is a need for the licensor to be vigilant. A licensee's occupation does not become hostile possession or the possession of a trespasser the moment the licence comes to an end. The licensor has to file the suit with promptitude and if it is shown that within reasonable time a suit for mandatory injunction has been filed with a prayer to direct the licensee to vacate the premises the suit will be maintainable.”

15. In *Padmavati Mahajan versus Yogender Mahajan and Anr (supra)*, this Court held as follows:-

“29. I may however note, two objections which were raised in the written statement but with regard to which no issues were framed. The first contention in the written statement is with regard to maintainability of the Suit for mandatory injunction and the second contention is with regard to the court fees. I have quoted in detail the cross examination of the defendant no.1. In his cross examination he has admitted that he had shifted to the Property in question in his capacity as a son of his parents and then had voluntarily stated that he was also a partner in the Partnership Firm. His claim as a benami owner has been rejected. Occupation of the defendant no.1 therefore was a permissive occupation or maximum as that of a gratuitous licensee. The defendant no.1 does not have any right in law to reside in the Property contrary to the wishes and desire of the plaintiff. The Suit for mandatory injunction is therefore maintainable in view of the decision of the Supreme Court in

Joseph Serverence versus Benny Mathew reported in (2005) 7SCC 667 and decision in Delhi Gate. Services Pvt. Ltd versus Caltex (India) Ltd. reported in AIR 1962 P&H 370.”

This is also a case where the plaintiff had filed a suit for mandatory injunction against her son the defendant and her daughter-in-law. As the said son and daughter in law were held to be licensees, it was held by this Court that a suit for mandatory injunction was maintainable.

16. *The legal position that follows is that where a suit is filed with promptitude against a licensee whose licence is terminated, a Suit for mandatory injunction is maintainable. In the present case there is no submission or argument raised that plaintiff did not file the suit with promptitude or that there was any delay in filing the suit. Admittedly, the license was terminated on 25 June, 2011 and the suit is filed in August 2011.*

17. *Even otherwise, it was held by the Supreme Court in the case of Sant Lal Jain versus Avtar Singh (supra), that even if there is some delay, to avoid multiplicity of proceedings the licensor should not be driven to file another round of suit with all the attendant delay, trouble and expense.”*

19. This Court is of the opinion that since the court fee has also now been deposited, it cannot now be said that the decree of possession cannot be granted when the suit is structured seeking the prayer of mandatory injunction.

20. The operative portion of the impugned order dated 15th April, 2021 passed by the Appellate Court clearly granted an injunction in respect of the removal of the locks.

21. In the opinion of this Court, no substantial questions of law arise in the present appeal. Accordingly, the appeal, along with all pending applications, is dismissed.

22. Executing Court shall proceed in the matter. Considering the animosity and acrimony between the parties, the Plaintiffs are permitted to seek the appointment of a Local Commissioner before the Executing Court, if deemed fit, instead of the directions for removal of the locks by the Defendants concerned.

**PRATHIBA M. SINGH
JUDGE**

DECEMBER 10, 2021/dk/Ad

