

**RSA-271-1991****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****RSA-271-1991 (O&M)
Reserved on : 08.07.2024
Pronounced on : 26.07.2024****HOSHIAR SINGH (SINCE DECEASED)
THR LRS AND OTHERS****....Appellants****VERSUS****SUKHA AND OTHERS****....Respondents****CORAM : HON'BLE MRS. JUSTICE ALKA SARIN****Present :** Mr. Amit Jain, Senior Advocate with
Mr. Varun Parkash, Advocate
for appellant Nos.1(i) to 1(iii), 2(i) to 2(iii), 3, 7 and 8.Mr. Vishal Garg Narwana, Advocate
for the respondents Nos.1 to 4.

None for respondent No.6.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the defendant-appellants challenging the judgment and decree dated 09.01.1991 passed by the First Appellate Court reversing the judgment and decree dated 31.07.1989 passed by the Trial Court.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondents herein filed the present suit averring therein that the plaintiffs and defendant No.11 were owners of agricultural land measuring 19 Kanals and 7 Marlas situated in the revenue estate of Village Bhopani, Tehsil and District Faridabad as fully detailed in the plaint. It was the case set up that



the father of the plaintiffs and defendant No.11 gave this land to the father and grandfather of defendants No.1 to 10 on licence during his lifetime about 22-23 years back for sowing and harvesting the crops *Bawajah Baradari*. The father of plaintiffs No.1 to 3 and defendant No.11 and husband of plaintiff No.4 had died, and the plaintiffs and defendant No.11 are the legal heirs and successor-in-interest. Since they did not want to continue the defendant-appellants as licensee in the land in dispute, hence a legal notice was issued on 08.04.1986 terminating the licence. Hence, the present suit for issuance of a decree of mandatory injunction directing the defendant-appellants to vacate the suit land.

3. The suit was contested by the defendant-appellants who filed a joint written statement contending therein that Mandotri, the predecessor-in-interest of the plaintiffs and defendant No.11, and the father of the defendant-appellants, namely, Bhuley, were real brothers. The land in dispute was owned by one Mathura son of Sukh Dev who had no issue. Bhuley and Mandotri had to succeed to the land but before the death of Mathura, Mandotri and Bhuley filed a suit for declaration against Mathura which was decreed on 16.03.1951 vide which Mandotri and Bhuley became owners of the suit land. During their lifetime, Mandotri and Bhuley orally partitioned the land and the suit land fell to the share of Bhuley i.e. the predecessor-in-interest of the defendant-appellants and that the defendant-appellants have been cultivating the suit land thereafter continuously as



owners. It was further the case that after the filing of the present suit, the defendant-appellants for the first time came to know that the suit against Mathura which was to be filed on behalf of Mandotri and Bhuley was only filed by Mandotri omitting the name of Bhuley. They also claimed ownership by way of adverse possession.

4. Replication was filed wherein the contents of the plaint were reiterated and those of the written statement were denied.

5. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiffs and defendant No.11 were the owners of the suit land ?
2. Whether the father of the plaintiffs gave the suit land on licence to the father and grandfather of defendants No.1 to 10 ?
3. If issue No.2 is proved, whether the licence has been revoked vide legal notice dated 08.04.1986 ?
4. Whether the suit is not maintainable ?
5. Whether the entries in the revenue records showing the defendants as tenant are wrong ?
6. Whether the contesting defendants have become owners by adverse possession ?
7. Relief.



6. The Trial Court dismissed the suit holding that the plaintiff-respondents had failed to prove that the suit land had been given on licence and held that the defendant-appellants have become owners by way of adverse possession. Aggrieved by the same an appeal was preferred by the plaintiff-respondents which appeal was allowed by the First Appellate Court vide judgment and decree dated 09.01.1991 reversing the findings returned by the Trial Court and holding that the plaintiff-respondents are the owners of the suit land on which the defendant-appellants were mere licencees and that the licence had been validly revoked. Hence, the present regular second appeal by the defendant-appellants.

7. The learned senior counsel appearing on behalf of the defendant-appellants would contend that in the Khasra Girdwari for the year 1962-63 (Ex.D-8) in Column No.10 the defendant-appellants have been referred to as being in possession on the ground of "*Bewaja Baradari Butt*". In Ex.D-10, Ex.D-11 and Ex.D-12 the defendant-appellants have been shown as *Bashara Malkhan Bawaja Baradari*. Learned senior counsel would further contend that *Batwara Butt* clearly indicates that there was a family partition effected between the parties. Learned senior counsel has further contended that the ingredients of a licence are not proved in the present case. It was the case set up by the plaintiff-respondents that licence was given to the forefathers of the defendant-appellants. It is the contention of the learned senior counsel that licence rights are not heritable. In support



of his arguments, the learned senior counsel has relied upon the judgment of this Court in **Sunder Lal Vs. Sita Bali & Anr. [2003 (3) RCR (Civil) 243]** to contend that the licence, being personal to the person in whose favour licence is granted, is not heritable. Further, reliance has been placed upon the judgment in **Delta International Ltd. Vs. Shyam Sunder Ganeriwalla [1991 (1) RCR (Rent) 447]** to contend that there is a thin distinction between lease and licence and in the present case it is not being proved that the suit land was given on licence.

8. Per contra, the learned counsel appearing on behalf of the plaintiff-respondents No.1 to 4 would contend that the entry in the 1963 Khasra Girdhwari is a stray entry of *Batwara Butt*. The remaining revenue entries all show the defendant-appellants as in possession of the property and it has been mentioned that they are in possession as *Bashara Malkhan Bawaja Baradari* i.e. possession through owner on account of brotherhood. It is further the contention of the learned counsel that the decree dated 16.03.1951 itself in favour of Mandotri (Ex.D-1) was never challenged by Bhuley the predecessor-in-interest of the defendant-appellants. Reliance has been placed upon the judgment in the cases of **Milkha Singh (since deceased) though his legal representatives Vs. Makhan Singh & Ors. [2008 (3) RCR (Civil) 478]**, **Arjan Singh & Ors. Vs. Hari Singh & Ors. [2007 (3) RCR (Civil) 50]**, **Ram Murti Vs. Smt. Sarla Devi [1998 (3)**



RCR (Civil) 704] and Sant Lal Jain Vs. Avtar Singh [1985 (1) RCR (Rent) 696].

9. Heard learned counsel and perused the record.

10. In the present case it is an admitted position that Mathura was the owner of the suit land and he suffered a decree in favour of Mandotri on 16.03.1951. Though the case set up by the defendant-appellants is that Bhuley was also supposed to be a party to the said suit, however, the suit was filed only by Mandotri and they came to know of the same for the first time after the filing of the present suit. The defendant-appellants have not laid any challenge to the said judgment and decree dated 16.03.1951 in favour of Mandotri. The said decree passed no right, title or interest in favour of Bhuley. Though the learned senior counsel appearing on behalf of the defendant-appellants has argued that there was a family partition, however, in the absence of having any right in the property in favour of Bhuley, the question of a family partition would not arise. A family partition would be effected only when the parties have a right in the property. Once a person i.e. Bhuley in the present case, had no right, title or interest in the suit land, the suit land could have only been given to him either by way of a decree or by way of transfer. The reliance of the learned counsel on the stray entry that in Ex.D-8 which refers that they are in possession on account of a *Bewaja Baradari Butt* deserves to be rejected inasmuch as there is no presumption of truth attached to khasra girdawaris. All the subsequent



entries referred to the defendant-appellants as being in possession as *Bashara Malkhan Bawaja Baradari* i.e. in possession through owner on account of brotherhood. The argument of the learned senior counsel that the plaintiff-respondents have failed to prove that the present was a case of the suit land having being given on licence deserves to be accepted. The Hon'ble Supreme Court in the case of **Delta International Ltd.** (supra) has held that the distinction line between a lease and a licence is thin. It has been held that in the absence of a written document, when a person is in exclusive possession with no special evidence as to how he got in, intention is to be gathered from the other evidence which may be available on record and possession of the property would be most relevant circumstance to arrive at the conclusion that the intention was to create a lease. The Hon'ble Supreme Court in the case of **New Bus Stand Shop Owners Association Vs Corporation of Kozhikode & Anr. [2010 (1) RCR (Civil) 404]** has held as under :

'21. Relying on the said principle, Lord Denning explained that the difference between a tenancy and a licence is that, in a tenancy, an interest passes in the land, whereas, in a licence, it does not.

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27. If we apply the aforesaid principles in the facts of the case in hand, we are bound to hold that the agreement



between the parties merely falls under the category of licence as the licensee is never given the exclusive possession. The Corporation retained the exclusive possession of the shops and this is clear from the conditions of the licence discussed above.'

11. In the present case none of the ingredients of a licence had been proved. The defendant-appellants seem to have been in possession of the suit land exclusively and have been using it admittedly for the last 22-23 years. It is not the case of the plaintiff-respondents that they had any control over the suit land. There is not an iota of evidence on the record that any amount was being paid as licence fee. Nor was it recorded in the revenue document that they were in possession as a licensee. Infact, admittedly, for 22-23 years the suit land had been in possession of the defendant-appellants exclusively without any interruption. That being so, it cannot be held that the possession of the defendant-appellants on the suit land was that of a licensee. In the absence of it being proved that the suit land was given to the defendant-appellants as licensee, the suit must necessarily fail. It is further to be noticed that there is no discussion by the First Appellate Court as to how it has come to a conclusion that the present was a case of a licence.

12. In view of the judgment of the Hon'ble Supreme Court in the case of **Pankajakshi (Dead) through LR's & Ors. vs. Chandrika & Ors.**



[AIR 2016 SC (Civil) 1091] there would be no requirement to frame substantial questions of law.

13. In view of the discussion above, the present appeal is allowed and the impugned judgment and decree passed by the First Appellate Court is set aside and the judgement and decree of the Trial Court are restored. The the suit filed by the plaintiff-respondents is dismissed. Pending applications, if any, also stand disposed off.

26.07.2024

Aman Jain

(ALKA SARIN)

JUDGE

*NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*