



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

RSA-1987-1992

Reserved on: 08.05.2025

Pronounced on: 23.07.2025

Jagan Nath (Deceased) Through LR

....Appellant

Versus

Sita Ram (Deceased) Through LR

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr. Amit Jain, Senior Advocate, with
Mr. Parit Aggarwal, Advocate for the appellant.

Mr. Akash Yadav, Advocate
for the respondent.

VIKRAM AGGARWAL, J.

This is defendant's appeal against the judgment and decree dated 06.10.1992 passed by the Court of Additional District Judge, Sirsa dismissing the appeal filed by the defendant against the judgment and decree dated 21.05.1991 passed by the Court of Sub-Judge, First Class, Sirsa vide which the suit for mandatory injunction filed by the plaintiff was decreed.

2. For the sake of convenience, the parties shall be referred as per their original status.

3. Parties to the *lis* are real brothers, both being sons of one Nand Lal. The plaintiff (Sita Ram) instituted a suit for mandatory injunction to direct the defendant (Jagan Nath) to vacate and deliver possession of the first floor of a house (fully described in the plaint) situated in Gali Khaiwali inside Rania Gate, Sirsa (hereinafter referred to as the disputed property).



The plaintiff claimed to be the owner of one big house which was earlier under the ownership of his father Nand Lal. The plaintiff acquired ownership of the said house by way of judgment and decree dated 14.08.1974 passed by the Court of Sub-Judge, Sirsa in Civil Suit No.544 of 1974 titled as **Sita Ram Vs. Nand Lal**. The defendant, who was the real brother of the plaintiff and was earlier a Government employee was stated to have been residing with his family members in portion ABCD in the said house. He had been occupying the disputed property with the consent of Nand Lal as his licensee. It was averred that since Nand Lal had transferred the land to the plaintiff, the defendant became a licensee under him.

3.1 The defendant started picking up quarrels with the plaintiff, his other brothers and even with his father Nand Lal. The defendant got the plaintiff and his brother Madan Lal challaned under Section 107/151 of the Code of Criminal Procedure (for short Cr.P.C.) on account of the differences which had cropped up between the brothers. The defendant was requested to vacate the disputed property. However, he kept on putting off the matter.

3.2 In February 1982, when the defendant was requested to vacate the disputed property, he got enraged and even threatened the plaintiff and his family members. The license was revoked in 1982, after which the suit was filed.

4. The suit was opposed by the defendant. In the written statement, certain preliminary objections as regards maintainability, the suit being bad for non-joinder of necessary parties, limitation, *locus standi*, cause of action, the plaintiff having concealed true facts etc. were raised. It was also averred that since the contents of the plaint were those of a suit for possession, Court fee on the market value should have been affixed.



4.1 On merits, it was admitted that Nand Lal was the owner of the house. It was denied that plaintiff had become owner of the same by way of judgment and decree dated 14.8.1974 (Ex.P3), which was stated to be a result of fraud and misrepresentation. It was averred that during the lifetime of Nand Lal, he had given the disputed property to the defendant and the remaining portion to Chiranji Lal, who was the other brother of the parties. It was also averred that permanent construction had been raised by the defendant in his portion as a result of which, the plaintiff had no right to claim the disputed property. Otherwise, the relationship between the parties was admitted. All other averments were denied.

5. In the replication filed to the written statement, the averments made in the written statement were denied and those made in the plaint were reiterated.

6. From the pleadings of the parties, following issues were framed:-

- “1. Whether the plaintiff is owner of the property in dispute, if so, to what effect? OPP**
- 2. If issue No.1 is proved, whether the defendant is a licensee in the disputed house? OPP**
- 3. Whether the suit is not maintainable in the present form? OPD**
- 4. Whether the suit is not properly valued for the purposes of court-fee and jurisdiction? OPD**
- 5. Whether the suit is time barred? OPD**
- 6. Whether the plaintiff has no locus-standi to file the present suit? OPD**
- 7. Relief.”**

7. Parties led their respective evidence.

8. The trial Court decreed the suit vide judgment and decree dated 21.05.1991 and directed the defendant to hand over the vacant possession of



the disputed property to the plaintiff within a period of three months. An appeal was preferred by the defendant against the said judgment and decree, which too was dismissed vide judgment and decree dated 06.10.1992, leading to the filing of the instant second appeal.

9. Learned counsel for the parties were heard.

10. Learned Senior counsel representing the defendant raised essentially four arguments. The first argument was that the decree dated 14.08.1974 (Ex.P3) was based on fraud and misrepresentation and, for, the defendant was not a party to the same nor the plaint, written statements etc. were produced, the same would not be binding upon the rights of the defendant and, it cannot be said that the disputed property had been transferred to the plaintiff on the basis of the said decree. Learned counsel referred to the record to support his contentions.

10.1 Learned Senior Counsel further submitted that the ingredients of license had not been pleaded in the plaint. He further submitted that a license is not heritable and, therefore, the defendant could not be said to be a licensee under the plaintiff. It was also submitted that under the circumstances, a suit for mandatory injunction was not maintainable and only a suit for possession could have been filed.

10.2 Learned Senior Counsel submitted that the defendant had raised construction of a permanent nature as a result of which, the defendant would be entitled to protection under Section 60(b) of the Indian Easements Act, 1882 (hereinafter referred to as the "Easements Act") and the license would, therefore become irrevocable. Learned counsel also referred to the definition of license and various other provisions of the Easements Act in support of his contentions.



11. *Per contra*, it was submitted by learned counsel representing the plaintiff that there is no error in the judgments and decrees passed by both Courts and that the suit was rightly decreed. Learned counsel submitted that despite a specific stand taken by the defendant that the disputed property had been given to him by Nand Lal, no evidence was produced to prove the same. He submitted that on the other hand, the plaintiff had duly produced copy of the decree dated 14.08.1974 (Ex.P3), vide which the plaintiff had become the owner of the house owned by Nand Lal. He submitted that once the property was the self-acquired property of Nand Lal, there was no occasion to implead the defendant as a party. It was further submitted that in case the defendant was aggrieved of the said decree, the same could have been challenged by him, which was not done.

11.1 As regards the license not being heritable, it was submitted that in terms of Section 54 of the Easements Act, the grant of a license may be expressed or implied. It was submitted that the same would be discernible from the conduct of the parties. Learned counsel submitted that the very fact that the plaintiff had permitted the defendant to stay in the disputed property after the same having been transferred to him by way of the decree (Ex.P3) would amount to the grant of an implied license and there would be no question of inheriting a license. As regards the issue of the defendant having raised permanent construction and, therefore, seeking the benefit of the provisions of Section 60(b) of the Easements Act, it was submitted that once the defendant had denied that he was a licensee, he would not be permitted to say that acting upon the license, he had executed the work of a permanent character and the license was, therefore, not revocable.



11.2 As regards a suit for mandatory injunction having been filed, learned counsel submitted that once the license was revoked, the right given to the defendant to occupy the disputed property had come to an end and once the defendant did not surrender the possession, a suit for mandatory injunction was maintainable. In support of his contentions, learned counsel placed reliance upon the judgment passed by the Supreme Court of India in the case of '**Ladli Prashad Jaiswal Vs. The Karnal Distillery Co. Ltd., Karnal and Others**', 1963 AIR (SC) 1279 and the judgments passed by this Court in the case of '**Jit Singh Vs. Prithi Singh**', 2022 (3) PLR 193 and in the case of '**Surjit Kaur Vs. Balwinder Kaur**', 2005 (4) RCR (Civil) 644.

12. I have considered the submissions made by learned counsel for the parties and have perused the record.

13. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of **Pankajakshi (Dead) through LRs and others V/s Chandrika and others**, (2016)6 SCC 157, followed by the judgments in the case of **Kirodi (since deceased) through his LR V/s Ram Parkash and others**, (2019) 11 SCC 317 and **Satender and others V/s Saroj and others**, 2022(12) Scale 92. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

14. Before advertng to the merits of the case, it would be essential to refer to the statutory provisions. Section 52 of the Easements Act defines license. Section 54 lays down that the grant of a license may be express or



implied. Section 56 lays down as to when a license would be transferable, whereas Section 60 deals with revocation of a license.

14.1 Section 52 of the Easements Act defines license:

“52. ‘License’ defined:

Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.”

14.2 Section 54 of the Easements Act reads as under:

“54. ‘Grant may be expressed or implied.

The grant of a license may be expressed or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.”

14.3 Section 56 of the Easements Act lays down;

“56. ‘License when transferable.

Unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee; but, save as aforesaid, a license cannot be transferred by the licensee or exercised by his servants or agents.

14.4 Section 60 of the Easements Act deals with revocation of license:

“60. License when revocable:

A license may be revoked by the grantor, unless-

- (a) it is coupled with a transfer of property and such transfer is in force;
- (b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.”



15. Reverting to the case, coming first to the question of the decree by virtue of which plaintiff claimed to have become the owner of the house of Nand Lal, the same is on record as Ex.P3. The same was passed by the Court of Sub-Judge, 2nd Class, Sirsa in Civil Suit No.544 of 1974 titled as **Sita Ram Vs. Nand Lal** on 14.08.1974. The plaintiff therein was declared to be owner in exclusive possession of the house owned by Nand Lal. A stand was taken by the defendant that he had come to know about the said decree only during evidence when DW2 was examined in Court. This stand was palpably false as the plaintiff duly pleaded about the decree in the plaint itself and the same had been denied by the defendant in the written statement. Except for the bald statement of the defendant, no other evidence was led to prove that the said decree was the result of fraud and misrepresentation. It has to be borne in mind that when a fraud is pleaded, the same has to be proved by leading cogent evidence. No suit was filed by the defendant to assail the validity or correctness of the decree. The argument that since it had been pleaded in the written statement that the decree was the result of fraud and misrepresentation, no suit was required to be filed is devoid of merit. As already noticed, no evidence was led to prove this fact during the course of evidence. The other way was to challenge it by way of a separate suit, which was also not done.

15.1 The defendant also claimed that the house had been given to him by Nand Lal but again no evidence was produced. Only a bald averment was made, followed by a bald statement in evidence, with no proof. In view of the same, it was rightly held that the plaintiff had become owner of the house of Nand Lal in 1974.



15.2 As regards a license not being heritable, there is no dispute with regard to the said proposition of law. However, it has come on record, which was duly admitted by the defendant while appearing as DW2 that he did not have cordial relations with his father, as also with the plaintiff. It has also come on record that criminal litigation had ensued between them and that even the defendant had been challaned under Section 107/151 Cr.P.C. on a complaint of his father. In fact, he was convicted also and sentenced to undergo imprisonment for four years. He stated that he had been residing in the disputed property as its owner without paying any rent and in the same breath also submitted that the plaintiff had been calling upon him to vacate the disputed property. It, therefore, means that after the death of Nand Lal, the defendant refused to part with the possession of the disputed property. Here Section 54 of the Easements Act would come in and there appears to be an implied grant of license by the plaintiff to the defendant. Had this not been the case, there would have been no occasion for both sides to have been quarrelling and litigating.

15.3 Coming to the third argument that since permanent construction had been raised by the defendant, the provisions of Section 60(b) would come in and the license would not be revocable, the same would not be available to the defendant, once he denied that he was a licensee under the plaintiff. He cannot be permitted to take both stands in the same breath. Even otherwise, no details of construction were produced and, therefore, the said argument was rightly rejected by both Courts.

15.4 As regards the maintainability of the suit, it was duly held by a coordinate Bench in the case of *Jit Singh's* case (supra) that where there was an express revocation of a license despite which possession had not been



handed over, a suit for mandatory injunction would be maintainable. In this judgment also, it was also held that where the factum of a license was denied, the provisions of Section 60(b) of the Easements Act could not be invoked;

“7. 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 thereafter 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.

8. 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.



9. *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*

15.5 In the case of *Surjit Kaur's* case (supra), a coordinate Bench held that the grant of a license can be express or implied and permission to stay to the legal representatives by a near relative without consideration amounts to the grant of a implied license and in such cases, a suit for mandatory injunction would be maintainable;

"9. After hearing learned counsel, I am of the view that the only question which needs determination in the present case is as has been posed in the preceding para. Section 52 of the Act defines the licence and Section 53 deals with the person who may grant a licence. Section 54 provides that the grant of a licence may be expressed or implied from the conduct of the grantor. The aforementioned provisions are reproduced hereunder for facility of reference:-

52. "Licence" defined Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.

53. Who may grant licence. A licence may be granted by any one in the circumstances and to the extent in and in which he may transfer his interests in the property affected by the licence.

54. Grant may be express or implied. The grant of a licence may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a licence."

10. *It is well settled that for the purposes of creation of licence, it is not necessary to record it in writing. The grant of licence can be expressed and can also be implied from the conduct of the grantor. The aforementioned interpretation has been given to Section 52 of the Act in*



Arjan Dev's case (supra) and the view in respect of both the sections is discernible from para 7 which reads as under:-

"...Under Section 52 of the Indian Easements Act, 1882, licence is defined. It says where one person grants to another a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right does not amount to an easement or an interest in the property, the right is called a licence. It is not necessary that for purpose of creation of licence any instrument be written. Defendant as a younger brother of the plaintiff had been living in his house with their mother as a family member. When he got married and started his kitchen separately, he continued to stay in the house with the permission of the plaintiff. It did not given any right of easement or interest in the property to the defendant. Under Section 54 of the aforesaid Act, the grant of licence may be express or implied from the conduct of the grantor. The defendant was living in the house as brother of the plaintiff and was, therefore, a licensee. The defendant was, therefore, staying in the suit property as a licensee which licence was revoked by the plaintiff. This was by notice dated 23 October 1986 (Ext. PW 1/6) given by the plaintiff..."

11. *When the principles as discernible from Sections 52 and 54 of the Act and as interpreted by the Division Bench of Delhi High Court in Arjan Dev's case (supra) are applied to the facts of the instant case, it becomes evident that parties to the lis are closely related. It is natural for the close relations to grant permission to one for stay in the house owned by the other. The findings recorded by the Courts below are that Paramjit Singh deceased husband of the defendant-respondent was a licensee and after his death, Balwinder Kaur his wife continued living in one room where her husband also used to live. It is also proved on record that the plaintiff-appellant had issued a notice dated 11.7.1991 calling upon the defendant-respondent to vacate the room and hand over possession thereof to her. Although the status as a licensee enjoyed by Paramjit Singh husband of the defendant-respondent may not be inherited by his widow Balwinder Kaur, yet after his death, she was permitted to continue in possession of the suit property. The conduct of the parties is such that It would give rise to a legitimate presumption that the defendant-respondent independently acquired the status of a licensee and has been continuing in possession as such. The plaintiff-appellant has proved on record the sale-deed dated 16.10.1963 (Ex. P4). It clearly*



shows that the property is owned by the plaintiff-appellant and none else. She had purchased the property from the Punjab National Bank. The sale-deed being a registered document has been accepted. The theory of benamidar propounded by the defendant-respondent that it was either purchased by the funds furnished by Durga Dai mother of Paramjit Singh and the plaintiff-appellant, cannot be gone into because of the provisions of Benami Transactions (Prohibition) Act, 1988. Therefore, it has to be held that by implications, the defendant-respondent is a licensee which stood terminated on 11.7.1991 when the plaintiff had issued notice.

12. *It is also well settled that suit for mandatory injunction would be maintainable after the termination of licence by issuing a notice when the licensee has refused to hand over vacant possession. The law imposes an obligation on a licensee to hand over vacant possession to the licensor, failing which a suit for mandatory injunction is maintainable. For the aforementioned proposition, reliance could be placed on a judgment of the Supreme Court in the case of Sant Lal Jain's case (supra). In this case, the observations of the Division Bench in Milka Singh v. Diana, AIR 1964 Jammu and Kashmir 99 were approved by the Supreme Court by observing as under:-*

"Now the parties are bound by the following factual findings recorded by the learned Additional District Judge in the first appeal, namely: (1) that the appellant who had become the sole proprietor of Mis. Jain Motors in 1967 though at the time of the lease of the property by the original owner Lt. Col. Sadan Singh to Mis. Jain Motors in 1963 he was only one of its partners, was the lessee of the property; (2) that the respondent had become a licensee of the suit shed under the appellant when the appellant was in possession of the whole of the demised premises including the suit shed as tenant under the original owner; (3) that the licence in favour of the respondent had been revoked before the institution of the present suit; and (4) that subsequent to the decision in the first appeal on 7.12.1978, the respondent had purchased the entire property from the original owner by a sale-deed dated 27.8.1979. In these circumstances, there is no merger of the lease of the whole property by its original owner in favour of the appellant by reason of the sale of the entire property by the original owner in favour of the respondent or of the licence given by the appellant to the respondent which had been revoked prior to the date of the suit.



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"In Milka Singh v. Diana, AIR 1964 Jammu and Kashmir 99, it has been observed that the principle that 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 Fazl Ali, J. as he then was) speaking for the Division Bench has observed:-

"After the termination of the 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 Section 55 of the Specific Relief Act. We might further mentioned that even under English law a suit for injunction to evict a licensee has always been held to be maintainable...

Where a licensor approached the Court for an injunction within a reasonable time after the licence is terminated, he is entitled to the 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."

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 in 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."
(emphasis added)

It is, thus, evident that form of the suit would not make any material difference. In the present case, it cannot be assumed that there is delay in filing the suit by the plaintiff-appellant because the license was terminated on 11.7.1971 and the suit was filed on 24.8.1991. In such circumstances, the suit of the plaintiff-appellant for mandatory injunction would be maintainable. It is only in cases where there is delay that a licensor may have to file a suit for possession as was the opinion expressed by this Court in the case of Delhi Gate Service Private Ltd.'s case (supra). Therefore, the suit for mandatory injunction is held to be maintainable.

13. The argument of learned counsel for the defendant-respondent based on the pleadings and statements of witnesses that an issue with regard to title should have been framed and then the question of status of the plaintiff-appellant as a licensee should not have been considered, would not require any detailed consideration because in neither of the two Courts below any such argument was raised nor any finding has been recorded. In the absence of any argument before the Courts below, it would be improper for this Court to entertain such an argument for the first time. The other argument that the licence could not be inherited by the plaintiff-appellant is also misconceived because there cannot be any dispute with regard to the aforementioned proposition. However, if it is independently inferable that the defendant-respondent is a licensee without reference to the status of her husband, then there is no impediment in assuming that the defendant-respondent was a licensee. As such a course is available under Section 54 of the Act and the argument raised by the defendant-respondent would not survive. Therefore, I have no hesitation in rejecting the argument raised by learned counsel for the defendant-respondent."

16. In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

Pending application(s), if any, shall also stands disposed of.

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 23.07.2025
vcgarg

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No