

Surjit Kaur Vs. Balwinder Kaur

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Court : Punjab and Haryana

Decided On : Sep-07-2005

Reported in : AIR2006P& H23; (2005)141PLR846

Judge : M.M. Kumar, J.

Acts : Court Fees Act, 1970 - Sections 7; [Specific Relief Act, 1963](#) - Sections 55; Easement Act, 1882 - Sections 52, 53 and 54; Benami Transactions (Prohibition) Act, 1988; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 96 and 100

Appeal No. : Regular Second Appeal No. 4823 of 1999

Appellant : Surjit Kaur

Respondent : Balwinder Kaur

Advocate for Def. : B.R. Mahajan, Adv.

Advocate for Pet/Ap. : Govind Goel, Adv.

Disposition : Appeal allowed

Judgement :

M.M. Kumar, J.

1. This is plaintiffs appeal filed under Section 100 of the Code of Civil Procedure, 1908 (for brevity, 'the Code') challenging the view taken by the learned District

Judge, Amritsar holding that the defendant-respondent could not have been held to be licensee merely because her husband Paramjit Singh was a licensee under the plaintiff-appellant as the license like the tenancy rights is not inheritable. It has further been held that in such a situation, the suit filed by the plaintiff-appellant for mandatory injunction directing the defendant-respondent to vacate one room in the suit property was not maintainable. The aforementioned view is based on the judgment of Madras High Court in Alagiri Chetty and Anr. v. Muthuswami Chetty and Ors., A.I.R. 1940 Madras 102 and a judgment of this Court in the case of Kaushalya Devi v. Bhola Nath and Anr., 1987 Shimla Law Journal 489. The view taken by the learned trial Court holding the defendant-respondent as a licensee has been set aside. The trial Court had also held in its judgment and decree dated 7.10.1997 that the plaintiff-appellant had purchased the suit property vide registered sale deed dated 16.10.1963.

2. The question of law which requires determination in the instant appeal is as under:-

'Whether status of the defendant-respondent as a licensee of the suit property could be implied in view of the provisions of Section 54 of the Easement Act, 1882 ?'

3. The plaintiff-appellant filed a suit for mandatory injunction for direction to the defendant-respondent to vacate one room as per the site plan on the basis that she is owner of the suit property. Paramjit Singh husband of the defendant-respondent was her brother. He was allowed by the plaintiff-appellant to live in one room as a licensee because he was a student at that time. The defendant-respondent is stated to be the widow of her brother Paramjit Singh who had died and she is asserted to have stepped into the shoes of her husband by becoming a licensee. The plaintiff-appellant is alleged to have served a notice dated 11.7.1991 and terminated her license but despite notice she has failed to vacate one room.

4. The defendant-respondent in her written statement has raised the plea that the plaintiff-appellant was not the owner of the suit property. It was claimed that the suit property was purchased by the mother of plaintiff-appellant and deceased Paramjit Singh husband of the defendant-respondent. However, in the sale deed

the name of the plaintiff-appellant was used. She also claimed that mother of the plaintiff-appellant was also owner of another house bearing No. 242/8 situated in Hussainpura, Amritsar. Paramjit Singh is alleged to have inherited that house on the basis of a will dated 6.5.1980. It has further been claimed that Paramjit Singh constructed the house which is the suit property and it consists of eight rooms, two shops, one store and two kitchens. The construction had started in the year 1965 and it was completed in the year 1970. The water and electric connections are claimed to be in the name of Paramjit Singh and he started residing in the suit property. He lived there peacefully till 1981. It is claimed that house No. 242/8 situated in Hussainpura, Amritsar was in the name of Paramjit Singh deceased husband of the defendant-respondent and the plot on which the suit property has been constructed by him was in the name of plaintiff-appellant. A claim has been made that on the basis of an oral agreement, the plaintiff-appellant and Paramjit Singh deceased husband of the defendant-respondent had agreed to mutually exchange the two properties. As a consequence, Paramjit Singh deceased husband of the defendant-respondent handed over the possession of House No. 242/8 situated in Hussainpura, Amritsar to the plaintiff-appellant and that thereafter she started residing in the said house. The possession of the suit property is claimed to have remained with her deceased husband Paramjit Singh. It is further claimed that Paramjit Singh sold House No. 242/8 situated in Hussainpura in the year 1981 for Rs. 35,000/- by executing the sale deed in favour of the vendees at the instance of plaintiff-appellant and the consideration amount was received by her as the aforementioned property stood in her name. The claim of the defendant-respondent is that the plaintiff-appellant in fact approached her brother Paramjit Singh in 1981 to give her one room for storing of her luggage as she had sold the house which was given to her. Some portion of the house is alleged to be in possession of the tenants inducted by Paramjit Singh deceased husband of the defendant-respondent and he was in possession of rooms, kitchen and one shop. It is alleged that the plaintiff-appellant with the help of Balwinder Singh, Police Inspector has subsequently occupied the entire suit property except the portion in possession of Paramjit Singh. The possession of the plaintiff-appellant is alleged to be illegal and the status of the defendant-respondent as a licensee has been denied.

5. The trial Court framed various issues. However, issue No. 5 concerning entitlement of the plaintiff-appellant for issuance of mandatory injunction is the pivotal issue. After recording evidence, the learned trial Court on the aforementioned issue opined as under:-

'The copy of sale deed Ex.P4 would show that New Bank of India sold the disputed property in favour of the plaintiff vide sale deed dated 16.10.1963. The stand of the defendant is that her husband purchased the disputed plot in the name of the plaintiff. There is no convincing evidence to prove that husband of the defendant had purchased the said plot in the name of plaintiff and paid the consideration. Balwinder Kaur defendant herself has no personal knowledge about the said sale way back in the year 1963. Therefore, the bald statement of the defendant without any corroborating convincing evidence cannot be accepted. The remaining story regarding exchange of house No. 242/8 situated in Hussainpura, Amritsar with the disputed property also cannot be accepted for the same reason. Once, the plaintiff is proved to be the owner of the disputed property, she has got the right to get its possession from licensee. Now the question arises as to whether the defendant is licensee in the disputed property. It has to be noted that the story of the defendant has already been disbelieved. Defendant has not claimed that she is in possession as licensee rather she has claimed ownership which has not been accepted. Defendant is none else than the wife of the brother of the plaintiff. According to the plaintiff, one room was given to Paramjit Singh husband of the defendant which is now in possession of the defendant. For the same reasons, the defendant was allowed to live in the said room. It is the case of either party that the defendant is paying any rent. Therefore, keeping in view the relationship, it has to be concluded that the defendant is licensee in the disputed property. Plaintiff has terminated the license by way of notice and she has got right to get it vacated and to get back* the 'possession. The suit for mandatory injunction against the licensee is maintainable. Therefore, this issue is decided in favour of the plaintiff and against the defendant....'

6. On the basis of aforementioned findings, the suit of the plaintiff-appellant was decreed in her favour and mandatory direction was issued to the defendant-respondent to vacate one room out of the suit property.

7. Feeling aggrieved, the defendant-respondent filed an appeal under Section 96 of the Code and the lower Appellate Court recorded the findings that status of the defendant-respondent as a licensee could not be inherited from her husband and, therefore, the suit of the plaintiff-appellant for mandatory injunction was not maintainable. For the proposition that the license was not inheritable, reliance has been placed on Allagiri Chetty 's case (supra). The observations 'of the learned lower Appellate Court on the issue read as under:-

'.... Of course, the respondent could not show by any cogent and reliable material that the appellant was licensee under her, yet, the legal position in this respect as laid down by Madras High Court in Allagiri Chetty and Anr. v. Muthuswami Chetty and Ors., A.I.R. 1940 Madras page 102, was that license was purely a matter personal between licensor and licensee. It is deemed to have elapsed with the death of licensor. The Hon'ble Madras High Court further categorically held that a license did not create an interest in the land as it was merely to do a thing lawfully which otherwise would be unlawful and it is thus a matter purely personal between the grantor and the grantee of the license. Such license must be held to have elapsed with the death of the licensor. In the case in hand, it is positive and specific case of the respondent that Paramjit Singh, deceased, husband of appellant was licensee. It is not controverted that Paramjit Singh has since died. Therefore, by applying the principles of law laid down in Alagir Chetty's case (supra) the license in favour of Paramjit Singh elapsed at the time of his death and as such the appellant could not be treated to be a licensee in the room in dispute under the respondent.'

Reliance was also placed on a judgment of this Court in Kaushalya Devi's case (supra).

8. Mr. Govind Goel, learned counsel for the plaintiff-appellant has argued that despite the findings that the license could not be inherited by the defendant-respondent after the death of her husband, the defendant-respondent can still be deemed to be a licensee. According to the learned counsel, a license is not necessarily required to be in writing. He has maintained that it can be expressed or it can be inferred by implications. Referring to the provisions of Section 54 of the

Easement Act, 1882 (for brevity, 'the Act'), learned counsel has argued that in the facts and circumstances of the instant case and in view of the evidence available on record, it would not be unwarranted to record a finding that by implication, the defendant-respondent had become a licensee after the death of her husband Paramjit Singh. Apart from Section 54 of the Act, learned counsel has placed reliance on a Division Bench judgment of Delhi High Court in the case of Shri Arjan Dev. v. Shri Om Parkash, A.I.R. 1992 Delhi 202. Learned counsel has then argued that a suit for mandatory injunction under Section 55 of the [Specific Relief Act, 1963](#) would be maintainable if after termination of license, a licensee has failed to discharge his obligation of handing over possession to the owner. In this regard, learned counsel has placed reliance on a judgment of the Supreme Court in the case of Sant Lal Jain v. Avtar Singh, : [1985]3SCR184 . He has further submitted that at best if the Court finds that there is a delay in filing the suit for mandatory injunction immediately after termination of license, then there is no hindrance in converting the suit to the one

for possession with a rider that the plaintiff had to pay the court fee in accordance with the provisions of Court Fees Act, 1970. For the aforementioned view, learned counsel has placed reliance on a judgment of this Court in the case of Delhi Gate Service Private Ltd v. Caltex (India) Ltd, New Delhi, .

9. Mr. B.R.Mahajan, learned counsel for the defendant-respondent on the other hand has argued that a perusal of the pleadings of the parties would clearly bring out that the issue with regard to the title was required to be settled before recording any finding in respect of the parties to the litigation. According to the learned counsel, it has been amply elaborated in the written statement of the defendant-respondent that there was an other property which was given to Paramjit Singh husband of the plaintiff-appellant and there was oral exchange between Paramjit Singh and the defendant-respondent. Learned counsel has submitted that whole construction on the suit property has been raised by the expenses incurred by Paramjit Singh husband of defendant-respondent. The other property bearing No. 242/8 situated in Hussainpura, Amritsar being in the name of husband of the defendant-respondent was sold by executing the sale deed in 1981 and the whole sale consideration was kept by the plaintiff-appellant. However, she

was allowed to put her luggage only in one room and in fact she was a licensee. Learned counsel has also made a reference to the statements of Amarjit Singh PW-1 and Darshan Lal PW-2 who alleged to have stated that Paramjit Singh has initially given them the shops on rent in the suit property and subsequently, the plaintiff-appellant became their landlady. Learned counsel has maintained that on account of the statement in the nature of admission made by the witnesses of the plaintiff-appellant, the theory of exchange indicated in the written statement stands substantially supported. Therefore, it is claimed that in the absence of decision on the question of title, the status of the plaintiff-appellant being a licensor and that of the defendant-respondent as a licensee could not have been determined by the Courts below. Learned counsel has prayed that the findings of the learned District Judge are absolutely correct that in the absence of inheritance of license by the defendant-respondent as a licensee could not have been determined by the Courts below. Learned counsel has prayed that the findings of the learned District Judge are absolutely correct that in the absence of the inheritance of license by the defendant-respondent after the death of Paramjit Singh her husband, no presumption could be raised that the license continues with the defendant-respondent.

10. 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 'license' and Section 53 deals with the person who may grant a license. Section 54 provides that the grant of a license may be expressed or implied from the conduct of the grantor. The aforementioned provisions are reproduced hereunder for facility of reference:-

'52. 'License' defined- Where one person grants to another, or to a definite number of other persons, a right to do, or to 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.

53. Who may grant license.- A license may be granted to any one in the circumstances and to the extent in and to which he may transfer his interests in

the property affected by the license.

54. Grant may be express or implied.- The grant of such a license 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 license.'

11. It is well settled that for the purposes of creation of license, it is not necessary to record it in writing. The grant of license 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 Arjun 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 Easement Act, 1882, license 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 license. It is not necessary that for purpose of creation of licence any instrument be written. Defendant as a young 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 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 23rd October, 1986 (Ext.PW-1/6) given by the plaintiff...'

12. 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 has 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-appellant had issued notice.

13. It is also well settled that suit for mandatory injunction would be maintainable after the termination of license 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 aforesaid 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 Milkha Singh v. Diana, A.I.R. 1964 J&K; 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 M/s Jain Motors in 1967 though at the time of the lease of property by the original owner Lt. Col. Sadan Singh to M/s Jain Motors in 1963 he was only one of its partners was the lessee of the property; (2) that 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 license 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.

xxxx xxxx xx xxxx xxxx xx'In *Milkha Singh v. Diana*, A.I.R. 1964 J&K; 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 Fazal 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 mention that even under English law a suit for injunction to evict a licensee has always been held to be maintainable, 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 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)

14. 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 11.7.1991 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.

15. 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 Court below, it would be improper for this Court to entertain such an argument for the first time. The other argument that the license 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.

For the reasons aforementioned, this appeal succeeds. The defendant-respondent is directed to hand over vacant possession of the suit property to the plaintiff-appellant within a period of six months from today i.e. on or before 10.3.2006.

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