
(2003) 04 P&H CK 0129

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular Second Appeal No. 2042 of 1989

Sunder Lal

APPELLANT

Vs

Sita Bali and Another

RESPONDENT

Date of Decision : 23-04-2003

Acts Referred:

Easements Act, 1882 — Section 60

Citation : AIR 2003 P&H 277 : (2003) 3 RCR(Civil) 243

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : S.K. Garg, H.N. Mehtani and Harsh Kinra, for the Appellant; H.S. Gilani, for the Respondent

Final Decision : Allowed

Judgement

V.M. Jain, J.

1.This Regular Second Appeal has been filed by Sunder Lal, defendant, against the judgment and decree dated 10-8-1989, passed by the learned Additional District Judge, whereby the appeal, filed by the plaintiffs, was accepted, the judgment and decree, passed by the trial Court, were set aside and the suit of the plaintiffs was decreed.

2. The facts, in brief, are that the plaintiffs filed a suit for declaration and for possession against the defendants, alleging therein that they were the tenants over the suit land and were entitled to take possession thereof from the defendants. It was alleged that Dr. Ram Lal Ball had taken a plot, which was permanently leased out in his favour by the Municipality in the year 1955 and this land was leased out for the construction of a Clinic and that after taking the land on lease. Dr. Ram Lal Bali had constructed a pucca structure on the said land and had started his medical practice. It was alleged that defendant No. 2, Sunder Lal, used to work as compounder with Dr. Ram Lal Bali, who died in the year 1978 and thereafter the plaintiffs inherited the disputed property. It was

alleged that after the death of Dr. Bali, the plaintiffs controlled the said clinic and defendant No. 2, Sunder Dass worked under the plaintiffs and that the lease money was regularly being paid by the plaintiffs as lessees to defendant No. 1, Municipality till 30-9-1983. It was alleged that defendant No. 1, Municipality did not give any notice of termination of lease to Dr. Ram Lal Bali or to the plaintiffs nor the said lease could be terminated. It was alleged that plaintiff No. 1 shifted from Meham because of old age but defendant No. 2, Sunder Lal continued to work as compounder under the plaintiffs in the said shop in the absence of the plaintiffs. It was alleged that defendant No. 1, Municipality, in collusion with defendant No. 2, Sunder Lal, created some false documents of lease relating to the disputed building in favour of defendant No. 2 and received Rs. 3,000/- from defendant No. 2 as advance rent @ Rs. 100/- per month. It was alleged that the same was illegal and void and not binding on the rights of the plaintiffs. Accordingly, the plaintiffs filed a suit for declaration and for possession.

3. The suit was contested by the defendants. In the written statement, filed by the Municipality, it was alleged that Dr. Ram Lal Bali was only a licensee over the suit property, on payment on tehbazari. It was denied that the plot was permanently leased out in his favour. It was alleged that defendant No. 2, Sunder Lal, had paid all the dues to defendant No. 1, and thereupon the said property had been leased out in his favour. In his separate written statement, it was alleged by defendant No. 2, Sunder Lal, that Dr. Ram Lal Bali had taken the plot on tehbazari from the Municipal Committee in the year 1958 and thereafter, he had raised the construction and had started his clinic. It was alleged that after the death of Dr. Bali, defendant No. 2 was in possession of the disputed property in his own right and had been paying the tehbazari fees to the Municipality. It was alleged that subsequently, the Municipality gave the said premises on rent to him @ Rs. 100/- per month w.e.f. October 1983 and charged Rs. 3,000/- from him as transfer fee.

4. After hearing both the sides and perusing the record, the learned trial Court dismissed the suit of the plaintiffs. However, the appeal, filed by the plaintiffs, was accepted by the learned Additional District Judge, the judgment and decree, passed by the trial Court, were set aside and the suit of the plaintiffs was decreed, declaring the plaintiffs to be the owners of the building and that the land underneath was with them under irrevocable licence. A decree for possession of the suit property was also passed in favour of the plaintiffs and against the defendants. Aggrieved against the same, defendant No. 2, Sunder Lal, filed the present Regular Second Appeal in this Court.

5. I have heard learned counsel for the parties and have gone through the record carefully.

6. Learned counsel for the defendant-appellant submitted before me that the learned Additional District Judge had held it to be a case of irrevocable licence. It was submitted that even if it was an irrevocable licence, still the licence could not be said to be heritable, keeping in view that the land in dispute was owned by

the Municipality and the land was given on licence by way of tehbazari fees to Dr. Ram Lal Bali. It was submitted that no licence-deed was placed on the record to show that it was an irrevocable licence. It was further submitted that the learned Additional District Judge had erred in law in placing reliance on the law laid down by the Hon"ble Supreme Court, in the case reported as Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun Narain Inter College and Others, . It was submitted that the plaintiffs had not set up the case of irrevocable licence and even otherwise, there was nothing on the record to show that it was a case of irrevocable licence. On the other hand, it was a simple case of licence based on payment of tehbazari fees.

7. In Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun Narain Inter College and Others, , the school was being run by the Society. The school was not recognised by the Education Department as it had no endowment and no building of its own. After protracted correspondence, the licensor i.e. the President of the Society, informed the authorities that he had given away the premises occupied by the school free of rent which may be considered his permanent contribution to the cause of the school. In pursuance of the said declaration, made by the licensor, the Education Department recognised the institution. Thereafter, the licensee did not realise rent from the school and allowed the school to occupy the building and the open land attached to it for the use of, the school. The school and the subsequently formed College, both were managed by the Committee of management, of which the licensor continued to be the president and thereafter his wife became the president and she was still continuing as the President. In the meanwhile, the management made permanent construction on the open land attached to the main building, without any objection by the licensor or his family members. Subsequently, the licensor along with his minor sons executed a sale deed transferring the property in dispute, occupied by the school, along with other property, to the plaintiff (transferee). After purchasing the property, the transferee served a notice upon the school and its Managing Committee, terminating the licence and directing them to restore the possession of the property to him. It was under those circumstances that it was held by the Hon"ble Supreme Court that in view of the "licensor"s donation of the property to the school and his subsequent conduct, the licensee could reasonably entertain a belief that the licensor had permitted the construction on the land and in pursuance thereof, the licensee made constructions and incurred expenses. It was held that the result was that the defendants, acting upon the licence, had executed the works by incurring expenses, which rendered the licence irrevocable. Furthermore, considering that the licensor was the President of the school from 1938 to 1961 and thereafter his wife had continued to be the President, it was held by the Hon"ble Supreme Court that it could not be said that he had no knowledge of the construction. It was found that if the licence did not permit the school to execute any permanent construction, the licensor would have certainly raise the objections. His conduct of acquiescence to the raising of constructions was eloquent enough to show that the license was irrevocable. The

authority Shankar Gopinath Apte Vs. Gangabai Hariharrao Patwardhan, , was distinguished.

8. In the present case, the plaintiffs had filed the suit for declaration and for possession, alleging therein that the plot in dispute was permanently leased out to Dr. Ram Lal Bali by the Municipality, Meham, in or about the year 1955 and that this land was leased out for constructing his clinic. It was further alleged that just after taking the land on lease, Dr. Ram Lal Bali, lessee constructed a Pucca double-storeyed structure on the land and started his medical practice therein, under the name and style of Bali Clinic. In the written statement, filed by defendant No. 1, Municipality, it was alleged that in fact Dr. Ram Lal Bali was only licensee of the said land, on payment of tehbazari fees. It was denied that the plot was permanently leased out to Dr. Bali. It was alleged that in fact, no permanent lease could be effected without a stamped document and due registration. It was further alleged that Dr. Bali died about 14 years back and his licence for occupation of the site in dispute on tehbazari fees stood terminated and the construction and the plot vested in the Municipal Committee. With regard to defendant No. 2. Sunder Lal, it was alleged that he was working in his own right as licensee, on payment of tehbazari fees. With regard to notice, it was alleged that there was no need to give any notice to the heirs of Dr. Bali as he was mere licensee and his heirs had no claim or right over the site in dispute. It was further alleged that the site was leased out to defendant No. 2, Sunder Lal, as per rules and that the disputed lease to Sunder Lal, defendant, was validly given u/s 60 of the Easements Act, 1882, it is provided that a licence 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. In the present case, as per tehbazari register, Ex DI, available on the record, Dr. Ram Lal Bali had taken the land in dispute on tehbazari from the Municipal Committee. Under such circumstances, Dr. Ram Lal Bali would be only a licensee in respect of the property in dispute. After the death of Dr. Ram Lal Bali, it appears that the Municipal Committee transferred the property in question in the name of defendant-appellant, Sunder Dass and charged Rs. 3,000/- from him as transfer fee, as would be clear from the receipt Ex DW2/E, available on the record, on a rent of Rs. 100/- per month. Admittedly, Dr. Ram Lal Bali had died sometime in the year 1969, as alleged by the plaintiffs themselves in para 4 of the plaint. In Smt. Kaushalya Devi v. Bholu Nath 1987 P LJ 366, it was held by this Court that a licence is not annexed to the property in respect of which it is enjoyed, nor is it a transferable or heritable right, but is a right purely personal between the grantor and licensee. Reliance in this regard was placed on the law laid down by the Madras High Court, in the case reported as Chinnan and Others Vs. Ranjithammal, .

10. In the present case, as referred to above, the land belongs to the Municipal Committee. It had given the same on tehbazari fees to Dr. Ram Lal Bali. He had raised the construction thereon and had started his clinic therein. So long as Dr.

Bali was active, he was entitled to retain the possession over the land in question, subject to payment of tehbazari fees, considering that the Municipal Committee was not entitled to revoke the licence, in view of Section 60(b) of the Easements Act, 1882. However, on the death of Dr. Bali, in my opinion, the licence would automatically come to an end and the plaintiffs would not be entitled to inherit the same, considering that the licence could not be said to be heritable. As referred to above, a licence is personal to the person in whose favour the licence has been granted. It is not heritable and as such on the death of licensee, the LRs would not be entitled to inherit the same. In my opinion, the plaintiffs would not be entitled to seek the possession of the disputed property from the defendants, on the ground that they had inherited the suit property on the death of Dr. Bali. This is especially so when the plea taken by the plaintiffs that they were lessees over the suit land did not find favour even with the lower appellate Court and it was held that Dr. Bali was only a licensee. As held by me above, a licence being not heritable, the plaintiffs were left with no rights in the suit property on the death of Dr. Bali.

11. In view of the above, the present appeal is allowed, the judgment and decree dated 10-8-1989, passed by the learned Additional District Judge, are set aside and the suit of the plaintiffs is dismissed with no order as to costs.