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## **Gurjit Kaur Vs Nazar Singh**

**R.S.A. No. 288 of 2014 (O and M)**

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**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Feb. 4, 2014

**Citation:** (2014) 176 PLR 626

**Hon'ble Judges:** Paramjeet Singh, J

**Bench:** Single Bench

**Advocate:** Gurcharan Dass, Advocate for the Appellant

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### **Judgement**

Paramjeet Singh, J.

This second appeal arises from a suit for mandatory injunction filed by plaintiff-Nazar Singh against defendants-Gurjit

Kaur and others which has been decreed by the Court of first instance vide judgment and decree dated 26.04.2013 and appeal preferred by

defendants has been dismissed by lower Appellate Court vide judgment and decree dated 18.12.2013. For convenience sake, hereinafter parties

will be referred to as they were arrayed in the Court of first instance i.e. appellants as defendants and respondent as plaintiff.

2. The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. However, the brief

facts, as pleaded by plaintiff, are to the effect that plaintiff had purchased the suit property from Pal Singh son of Sarwan Singh, vide registered sale

deed dated 28.11.1988. The portion shown red in the site plan attached with the plaint was in possession of defendants and portion shown green

in site plan was in his own possession. The portion shown red in the she plan had been given to defendants as licensee by plaintiff to reside in the

same and to serve plaintiff. It was an oral tenancy at the rate of Rs. 2,000/- per month. The house had been given to defendants on the condition

that when plaintiff would return to village after leaving his job, they would vacate the house. When plaintiff requested defendants to vacate the

house in dispute and to pay the arrears, they flatly refused to do the same. The issuance of notice to vacate the house and to pay the arrears also

went in vain. Hence, suit was filed.

3. Defendants resisted the suit and filed written statement raising preliminary objections that suit was barred by limitation because defendants had

been residing in the house in dispute for the last more than 20 years; suit for mandatory injunction is not maintainable; suit has been filed with a view

to circumvent the provisions of law and to avoid payment of court fee; defendants have become the owners of house in dispute by way of adverse

possession; since sale deed was not accompanied by delivery of possession, the same has lost its value in the eyes of law; the house was

purchased by Bagga Singh, Karam Singh and Iqbal Singh but plaintiff had got executed the sale deed in his own name in a clandestine manner and

thereafter construction was raised by Bagga; suit is vague as plaintiff himself is not sure whether possession of defendants is as licensees or tenants

and no legal notice had been issued to terminate the licence. Or merits, it was pleaded that Karam Singh was residing at Delhi and had contributed

for the purchase of house in dispute in the name of sons of Sher Singh, but plaintiff misused his position and got executed the sale deed in his own

favour. Defendants are in possession of the same even prior to the execution of sale deed on 28.11.1988. Other allegations in the plaint were

refuted.

4. On the basis of pleadings of parties, the Court of first instance framed following issues:

1. Whether plaintiffs are entitled to mandatory (sic. injunction) as prayed for? OPP

2. Whether suit is barred by limitation? OPD

3. Whether suit is not maintainable? OPD

4. Whether suit is vague, ambiguous and is liable to be dismissed? OPD

5. Relief.

5. After appreciating the evidence, the Court of first instance decreed the suit whereby defendants were directed to hand over the vacant

possession of the property in dispute to plaintiff within a period of two months thereof. Against that, defendants preferred an appeal which has

been dismissed by the lower Appellate Court. Hence, instant regular second appeal.

6. Following substantial questions of law have been suggested in the grounds of appeal for consideration by this Court:

(i) Whether the findings recorded by both the learned courts below are perverse?

(ii) Whether both the learned courts below committed illegality in decreeing the suit for mandatory injunction claiming possession of the house from

the appellants?

(iii) Whether both the learned courts below have recorded erroneous findings with regard to the plea of limitation taken by the appellants in their

written statement?

7. I have heard learned counsel for appellants and perused the record.

8. Both the courts below have recorded the concurrent finding of fact that house in dispute was purchased vide registered sale deed dated

28.11.1988 (Ex. P-6) and a separate suit between parties with regard to the question of title of house in dispute is already pending. It is the case of

defendants that it was a benami transaction and sale deed was wrongly executed in favour of plaintiff. Even Iqbal Singh, who was alleged by

defendants to be one of the co-buyers, has stepped into the witness-box as PW 3 and deposed against his own interest. It has been rightly held

that due notice was served on defendants for vacating the house as plaintiff has produced copy of notice dated 01.08.2011 (Ex. P-4) and post

receipt (Ex. P-5). In Sant Lal Jain Vs. Avtar Singh, , it has been held that appellant should not be denied the relief merely because he had couched

the plaint in the form of a suit for mandatory injunction.

9. Once the defendants have taken a plea of adverse possession, they have admitted the title of plaintiff. Once defendants are claiming their right by

way of adverse possession over suit property, it cannot be said that they can raise other pleas including tenancy available to them. It has also been

rightly held that if ownership is proved, relief cannot be declined on technical grounds. Concurrent findings of fact have been recorded by both the

Courts below. Learned counsel for appellants could not show that said findings are perverse or illegal or based on misreading, non-reading or

misappreciation of the material evidence on record. Consequently, said findings of fact do not warrant interference in regular second appeal. No

question of law, muchless substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.