

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 10.10.2011

+ CS(OS) No.1586/2005

Mrs. Harinder Dewan

..... Plaintiff

Through: Mr. Daviel Mashew, Advocate

versus

Shri Ravi Dewan

..... Defendant

Through: Mr. Daljinder Singh, Advocate

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No. |
| 2. To be referred to the Reporter or not? | No. |
| 3. Whether the judgment should be reported in Digest? | No. |

V.K. JAIN, J. (ORAL)

1. This is a suit for permanent and mandatory injunction. The plaintiff is the wife of the defendant, they having got married on 24th January, 1975. It is alleged that on 13th April, 2003, the plaintiff had to leave for USA to attend the funeral of her mother. When she returned to India in July, 2003 she was not allowed to enter the matrimonial house of the parties.

It is alleged that a three-bed room apartment bearing No. C-101, Vasundhara Apartments, Dwarka, New Delhi was purchased by the defendant in the name of the plaintiff and for her benefit. The defendant also purchased a double storey house bearing H.No.670, Ajit Singh Nagar, Mohali Phase-II, Punjab in the joint name of the parties and has let out the ground floor of the aforesaid house at the monthly rent of Rs.15,000/-. The flat bearing C-101, Vasundhara Apartments, Dwarka, New Delhi as well as H.No.670, Ajit Singh Nagar, Mohali Phase-II, Punjab are stated to be in the possession and control of defendant along with the documents of ownership of these properties.

The plaintiff has sought a) mandatory injunction directing the defendant to hand over half of the monthly rent received from H.No.670, Ajit Singh Nagar, Mohali Phase-II, Punjab to her, b) mandatory injunction directing the defendant to hand over documents of the property at C-101, Vasundhara Apartments, Dwarka, New Delhi and H.No.670, Ajit Singh Nagar, Mohali Phase-II, Punjab to her, c) permanent injunction restraining the defendant from preventing her from entering the matrimonial house i.e. C-550 Defence Colony New Delhi and having free access to her

son Saurabh at the matrimonial home, d) permanent injunction restraining the defendant from preventing her from entering her office at L-4, Connaught Place Lodge near Nirulas Hotel, New delhi, e) permanent injunction restraining the defendant from preventing the plaintiff from entering her properties at C-101, Vasundhara Apartments, Dwarka, New Delhi and H.No.670, Ajit Singh Nagar, Mohali Phase-II, Punjab, f) mandatory injunction directing the defendant to allow her to reside at E-55, Greater Kailash, Part-I, New Delhi, g) mandatory injunction directing the defendant to render the accounts for the property sold at Mehrauli and h) mandatory injunction directing the defendant to render true accounts and disclose all his assets so as to enable the plaintiff to assert her rights to the same.

2. The defendant filed Written Statement contesting the suit. He admitted his marriage to the plaintiff but denied the allegations made in the plaint against him. Regarding C-101, Vasundhara Apartments, Dwarka, New Delhi, it is alleged that this flat was purchased by the defendant from his own funds and for his own benefit and the plaintiff has nothing to do with the said house. As

regards, house at Mohali i.e. H.No.670, Ajit Singh Nagar, Mohali Phase-II, Punjab, it is alleged that it was purchased by the defendant from his own funds in the joint names of the parties. According to the defendant, he is realizing rent of Rs.12,000/- p.m. from Mohali house which is being utilized for upkeep and maintenance of the house. Regarding property at L-4, Connaught Place, New Delhi, it is alleged that the plaintiff has no right in the aforesaid property which belongs to the defendant. The defendant has denied owning apartment at E-55, Greater Kailash Part I New Delhi and it has been alleged that the said property was sold about 06 years back.

3. The following issues were framed on the pleadings of the parties:

- 1) Whether the house at 670, Ajit Singh Nagar, Mohali (Punjab) and flat C-101, Vasundhara Apartments, Dwarka, New Delhi were acquired exclusively out of the funds of the defendant? If so, its effect? – OPP
- 2) Whether the plaintiff is entitled to rendition of account of incomes derived from the said two properties and, if so, the period thereof? – OPP
- 3) Whether the matrimonial home of the plaintiff was C-550, First Floor, Defence Colony, New Delhi? – OPP
- 4) If Issue No.3 is answered in favour of the plaintiff,

whether the plaintiff is entitled to access to the said matrimonial home? – OPP

5) Whether the plaintiff has paid requisite court fees on the plaint? – OPP

6) Relief.

Issues No. 1 & 2

4. As regards, C-101, Vasundhara Apartments, Dwarka, New Delhi, the plaintiff has admitted in her cross examination dated 12th January, 2009 that the aforesaid flat was purchased by the defendant from his own funds. Admittedly, the documents of title of the aforesaid flat stand in the name of the defendant. Since, neither the consideration for purchase of C-101, Vasundhara Apartments, Dwarka, New Delhi was paid by the plaintiff nor does the property stand in her name, she has absolutely no right, title or interest in the aforesaid property and therefore cannot claim any right to enter the aforesaid property. She is also not entitled to documents of title of the property bearing No. C-101, Vasundhara Apartments, Dwarka, New Delhi, which belongs exclusively to the defendant and stand in his name.

Regarding H.No.670, Ajit Singh Nagar Mohali Phase-II, Punjab, the plaintiff has admitted in her cross

examination that even the aforesaid house was purchased by the defendant though in the joint name of the parties and the sale consideration was also paid by him. However, in his cross examination, the defendant, Shri Ravi Dewan, who is present in the Court has admitted that he had purchased the aforesaid property for the benefit of the plaintiff and she is entitled to 50% of the rental income from the aforesaid property after excluding the expenses incurred on the property. The defendant states that he has no objection to pay half of the rental income from H.No.670, Ajit Singh Nagar Mohali Phase-II, Punjab to the plaintiff after deducting the expenditure incurred by him on its upkeep and maintenance. Since the defendant is willing to give half of the rental income from the aforesaid house to the plaintiff after deducting the expenditure incurred on its upkeep and maintenance, the plaintiff is entitled to a decree of rendition of accounts with respect to the rental income earned by the defendant from H.No.670, Ajit Singh Nagar Mohali Phase-II, Punjab. It has been agreed today in the Court between the parties that the account will be rendered with respect to rental income derived by the defendant w.e.f. 1st August, 2003. The issues are decided accordingly.

Issues No. 3 & 4

5. The defendant admittedly was residing in Basement Floor of C-550, Defence Colony, New Delhi when the suit was filed. The defendant, who is present in the Court states that he has absolutely no objection to the plaintiff coming and living in this house at any point of time, she desires. He further states he will not prevent the plaintiff from entering the aforesaid house so long as she is his wife. It is accordingly held that H.No.C-550, Basement Floor, Defence Colony, New Delhi is the matrimonial house of the plaintiff and she is entitled to live in that house so long as she is the wife of the defendant and defendant continues to live in that house.

The issues are decided accordingly.

Issue No.5

The issue is not pressed. The issue is accordingly deleted.

Issue No.6

6. In view of my findings on the other issues, the plaintiff is entitled to rendition of accounts with respect to rental income derived by the defendant from H.No.670, Ajit Singh Nagar Mohali Phase-II, Punjab w.e.f. 1st August, 2003

and she is also entitled to injunction restraining the defendant from preventing her from entering H.No. C-550, Basement Floor, Defence Colony, New Delhi so long as the defendant continues to live in that house, which is stated to be a rented accommodation.

The issue is decided accordingly.

ORDER

In view of my findings on the issues, a preliminary decree for rendition of accounts of the rental income derived by the defendant from H.No.670, Ajit Singh Nagar Mohali Phase-II, Punjab w.e.f. 1st August, 2003 is hereby passed in favour of the plaintiff and against the defendant. The plaintiff will be entitled to half of the net rental income which would mean – half of the amount that remained with the defendant after deducting the expenditure incurred by him on the upkeep and maintenance of the house. The defendant is also restrained from preventing the plaintiff from entering C-550, Basement Floor, Defence Colony, New Delhi, so long as he continues to reside in that house. The defendant is also restrained from preventing the plaintiff from entering H.No.670, Ajit Singh Nagar, Mohali Phase-II, Punjab which property stands in the joint names of the

parties. The defendant who is present in the Court states that he will file a Statement of Account supported by his affidavit, disclosing therein the gross income derived by him from H.No.670, Ajit Singh Nagar, Mohali Phase-II, Punjab, the expenditure incurred by him on upkeep and maintenance of the aforesaid house and the balance amount which remained with him as net rental income from 1st August, 2003 onwards. The aforesaid affidavit along with necessary documents in support thereof be filed within 08 weeks from today with a copy to the Plaintiff. On filing of the aforesaid affidavit, containing accounts of the income derived by the defendant from H.No.670, Ajit Singh Nagar, Mohali Phase-II, Punjab the plaintiff will be entitled to apply for passing of a final decree for payment of the amount which is found due to her. In the facts and circumstances of the case, there shall be no order as to costs.

Decree sheet be drawn accordingly.

(V.K. JAIN)
JUDGE

OCTOBER 10, 2011
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