

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1063 of 2016 (O&M)
Date of Decision : 17.05.2016

Lovekush and another

....Appellants

Versus

Sanjeev Jain and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Alok Mittal, Advocate
for the appellants.

Surinder Gupta, J.

This is second appeal against the judgment passed by Civil Judge (Junior Division), Chandigarh whereby suit of plaintiffs was decreed and defendants were directed to hand over possession of one room of the ground floor of house No. 3450, Sector 27-D, Chandigarh to plaintiffs Sanjeev Jain and Smt. Krishna Kumari Jain on receipt of ₹4 lacs. On appeal, findings of learned Civil Judge (Junior Division), Chandigarh were affirmed by the Ist Appellate Court of learned Additional District Judge, Chandigarh.

BRIEF FACTS

2. The suit property, which is 10 ½ *marla* house, was owned by Smt. Ram Murti Jain wife of late Sh. Lala Parmanand. She earlier executed Will dated 22.07.1992, which was cancelled vide cancellation deed dated 28.06.1994. She executed second Will dated 28.06.1994 and got it registered with Sub-Registrar, U.T. Chandigarh. She executed third registered Will dated 10.04.1996 as per which portion of the house on ground floor comprising of two rooms, one drawing-cum-dining room and one bed room with kitchen and half portion of verandah and half portion of

Kumari Jain-plaintiff no. 2 wife of late Sh. Ram Nath Jain. Further right side of ground floor comprising of two rooms with one kitchen alongwith half portion of verandah and half portion of courtyard was given to grandson Sanjeev Jain son of Sh. Ram Nath Jain. First and second floors of the house were given to her other legal heirs.

3. After death of Smt. Ram Murti Jain, plaintiff-Sanjeev Jain moved application to Estate Office, U.T. Chandigarh to transfer the house in question as per mandate given in third Will executed by Smt. Ram Murti Jain and on the basis of his application, Estate Office, U.T. Chandigarh issued letter dated 17.05.2004 consequent upon which house in question was transferred in favour of Krishna Wati Jain (mother of plaintiff), Lovekush Jain, Gautam Jain and Raghuyash Jain in equal share.

4. The Will in question was admitted by all the legal heirs and defendants-appellants became owners to the extent of 20% share each in the house in question. A deed of understanding and settlement was arrived between defendants and plaintiffs. The house comprised of ground floor plus two storeys. Defendants no. 1 and 2 were owners in possession of first floor which comes out to 30%. Raghuyash Jain another brother of defendants was in possession of top floor i.e. 20% of the house while share of plaintiffs who were in possession of ground floor came to be 50%. Defendants agreed that plaintiffs can retain possession of entire ground floor after paying ₹4 lacs and balance share in the ground floor i.e. 10% shall be transferred in the name of Smt. Krishna Wati Jain. On the date of execution of deed of understanding, possession of one room on the ground floor was given to defendants and on receipt of letter dated 17.05.2004 from the Estate Office, transferring the house in favour of plaintiffs, defendants

and their brother Raghuyash Jain, defendants were asked to receive ₹4 lacs and return possession of room in question. They agreed to return possession but asked for sometime. Instead of raising dispute, plaintiffs agreed to their proposal. In the month of October and November, 2004, they were again requested to hand over possession of room in question and to receive ₹4 lacs but they refused.

5. Defendants contested the claim of plaintiffs with the plea that deed of understanding and settlement set up by plaintiffs has no sanctity in the eyes of law being not on requisite stamp papers. As per Will dated 10.04.1996, only life interest was created in favour of plaintiffs and they had to vacate the portion as soon as a residential house is constructed at village Saketri from the funds provided by the testator to Smt. Krishan Kumari. Other averments of plaintiffs were also denied.

6. Both the Courts below relying on the deed of understanding and settlement allowed the relief as claimed by plaintiffs.

7. This fact is not disputed that Smt. Ram Murti Jain was owner of the disputed house. The Wills (as executed by her) are also admitted and the deed of understanding and settlement executed between the parties is not disputed.

8. Learned counsel for appellants has very strenuously put-forth two points. Firstly, only life interest in suit property was created in favour of plaintiffs under the Will of Smt. Ram Murti Jain, as such, plaintiffs have no title over the disputed property. Secondly, though it was agreed that plaintiffs will pay ₹4 lacs to get the room on ground floor vacated yet no evidence was produced to show that they were having ready money to pay this amount.

9. First contention of learned counsel for the appellants carries no weight at this stage. The matter in dispute in this case is not the interest of plaintiffs in suit property. Even if, it is life interest as alleged by appellants, still both plaintiffs are alive and the dispute is not pertaining to their share in the house in question. The second argument advanced by learned counsel for appellants also has no merit as plaintiffs filed suit in August, 2005 i.e. within one year of transfer of share between the parties by Estate Office, U.T. Chandigarh. Plaintiffs have alleged that they had ready money for payment and requested defendants-appellants to accept and receive the same. In the written statement, defendants had nowhere alleged that they were ready and willing to vacate the room in question on receipt of ₹4 lacs. In the deed of understanding, this was agreed that defendants-appellants will vacate the room after expiry of six months from the date of transfer of ownership by Estate Office on receiving ₹4 lacs failing which plaintiffs shall be entitled to receive ₹3000/- per month from them as licence fee. It was also settled between parties that in the event of plaintiffs failing to make payment of ₹4 lacs within six months, defendants shall have the right to receive the amount with interest.

10. Both the Courts below have taken note of settled terms between the parties and have committed no error of law and fact while reaching the conclusion that plaintiffs always remained ready and willing to perform their part of contract and are entitled to specific performance of agreement/deed of understanding and settlement between the parties.

11. Learned counsel for the appellants could not point out that any observation of Courts below is not based on evidence on file or is the result of misreading of any document or evidence on record. It is a case where all

the documents alleged by plaintiffs are admitted. Defendants are only contesting the suit by raising objections, which are not cogent, convincing or tenable. They have been successful to thwart the efforts of plaintiffs to get one room on ground floor for a period of about 11 years after filing the suit.

12. On perusal of judgments of both the Courts below, I find no legal or factual infirmity therein calling for any interference. No substantial question of law, requiring determination, arises in this appeal, which has no merit.

Dismissed.

May 17, 2016
jk

(SURINDER GUPTA)
JUDGE