

In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No. 2212 of 2015 (O&M)

Date of decision: 8.1.2016

Balwanti through LR Rohtas

.....Appellant

Versus

Simru

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Subhash Ahuja, Advocate,
for the appellant.

Mr.Sudesh Kumar , Advocate
for the respondent-caveator.

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest?

Raj Mohan Singh, J.

1. Plaintiff Balwanti has filed a suit for permanent injunction restraining defendant Simru, her husband, from interfering in peaceful possession and enjoyment of house No.22, Block 2013, Sector 32-C, Chandigarh and further restraining him from letting out, selling, mortgaging, leasing out or transferring the suit property in any manner.

2. Plaintiff alleged that she is legally wedded wife of defendant. Her marriage was performed long back according to Hindu rites and ceremonies. One son, namely, Rohtash and one daughter, namely, Krishna took birth from this wedlock. Both of them are married and have their own families. Rohtash is living

with the plaintiff for the last many years as the defendant had stopped supporting her in her old age. Plaintiff is keeping her son and his family in the aforesaid house, which is claimed to be joint Hindu family property. Plaintiff had filed a case under Section 125 Cr.P.C. against the defendant, in which maintenance of ₹ 621/- per month was granted since 1991. Another case was also filed by her under Section 18 of Hindu Adoption and Maintenance Act, claiming maintenance to the tune of ₹ 1,000/- per month. Plaintiff further alleged that the suit property was purchased by the parties out of their savings and joint funds, though allotment letter was issued in the name of the plaintiff being head of the family. Plaintiff was living in the suit property as a matter of legal right, having spent her earnings in the property and it was the legal duty of the defendant to provide her a matrimonial house. Feeling apprehension of dis-possession, the present suit came to be filed.

3. Defendant contested the suit on all counts. It has been admitted that the plaintiff is legally wedded wife of defendant and one son, namely, Rohtash and one daughter, namely, Krishna took birth from this wedlock. Defendant has denied that he has stopped supporting the plaintiff for the last many years and that is why son Rohtash started living with the plaintiff. Factum of property being joint Hindu family property has been denied. Filing of petitions under Section 125 Cr.P.C.

and 18 of the Hindu Adoption and Maintenance Act have been admitted. Maintenance to the tune of ₹ 621/- per month is an admitted fact. However, petition under Section 18 of the Hindu Adoption and Maintenance Act was dismissed. Defendant alleged that the suit property was allotted to defendant on 5.7.1982 vide allotment letter No.3591/DC/ALC-2 by Chandigarh Administration under the Licensing of Tenements and Sites and Services in Chandigarh Scheme, 1979. It has been denied that the suit property was purchased out of joint funds of the family. It has also been denied that the defendants have ever threatened to evict the plaintiff from the suit land. As per recital of the allotment, tenement No.2013/22 in Sector 32-C, Chandigarh has been allotted to the defendant as a licensee on monthly rent of ₹ 50/- exclusive of electricity and other charges on certain terms and conditions, which have been mentioned in the allotment letter dated 5.7.2002.

4. Defendant had earlier filed a suit for possession in respect of suit property against Rohtash, son of the plaintiff. Said suit was decreed and defendant was held entitled to seek possession of the suit property from Rohtash. Rohtash was never member of the family unit as he was having his own separate family including his wife, children and mother. The defendant is living in rented house, even though he is owner of the suit property. The present suit property was allotted under

the Licensing of Tenement and Sites and Services in Chandigarh Scheme, 1979 in lieu of house No.1056, Kumhar Colony, Sector 25, Chandigarh. Rohtash, son of the plaintiff, on request was allowed by the plaintiff to live with his family in the said house as licensee. Since Rohtash started misbehaving with the defendant, defendant filed suit for possession and also got published a notice in newspaper disclaiming Rohtash as his son and further debarred him from inheriting the property in any manner. After serving a legal notice to Rohtash, he filed a suit for possession. Trial Court decreed the suit on 21.4.2006 for possession of house in question. Rohtash remained unsuccessful in first appeal, which was dismissed on 28.11.2008. RSA No.625 of 2009 was also filed by Rohtash, which was dismissed on 19.9.2009. In this way, Rohtash remained unsuccessful in a suit for possession filed by defendant in respect of house in question.

5. Trial Court framed issues and thereafter, both the parties led evidence in support of their case.

6. During the pendency of suit, plaintiff Balwanti died on 6.9.2008 and Rohtash was brought on record as legal representative of Balwanti vide order dated 24.3.2009.

7. Trial Court held that wife has equal right to reside in her matrimonial house, irrespective of the fact that the house stands in the name of her husband. Right of defendant to

recover property from Rohtash as per judgment dated 21.4.2006 has to be in accordance with law and not by way of any illegal means. Trial Court observed that since plaintiff is Balwanti only, therefore, without divulging anything vis-a-vis the aspect of decree dated 21.4.2006, suit was decreed, thereby restraining the defendant from interfering in the possession and enjoyment of Balwanti from the suit land. Despite the fact that Balwanti died on 6.9.2008 and Rohtash was duly brought on record on 24.3.2009, memo of party was not amended while passing judgment and decree dated 15.7.2014.

8. Despite the judgment and decree dated 15.7.2014 passed by the Civil Judge (Jr.Divn.), Chandigarh in favour of plaintiff Balwanti, an appeal was filed before lower Appellate Court through Rohtash on the ground that though the trial Court has decreed the suit of Balwanti, who has already been substituted by her legal heir i.e. Rohtash, but the trial Court has confirmed the relief qua Balwanti only and not qua her legal heir. In a way Rohtash espoused his grouse that in fact injunction should have been granted in his favour particularly when he was brought on record as legal representative of deceased Balwanti during pendency of suit. Rohtash prayed for the relief as granted to the original plaintiff, claiming himself to be member of the family and, therefore, he was entitled to his share in the house, which was allotted by Chandigarh Administration to

the defendant as family unit. Lower Appellate Court held that relief of injunction was a personal relief granted to Balwanti and on her death the same cannot be passed over to her legal representative especially Rohtash, who has lost the litigation in a suit for possession filed by defendant Simru, which was upheld up to the stage of Regular Second Appeal No.625 of 2009 decided on 19.9.2009 by this Court. The appeal was dismissed with cost vide judgment and decree dated 22.4.2015. Hence, the present appeal

9. I have heard learned counsel for both the parties.

10. When the tenement was allotted, relevant provision of the scheme in respect of family unit runs as under:-

“Family unit” means a family consisting of a person, his spouse, children and other relative dependent upon and residing with him and it includes earning sons and daughters. Married or earning son above the age of twenty one, shall be considered as a separate family unit provided that such a person is living in a separate jhuggi.”

11. Claim of Rohtash has been duly considered by the Courts in hierarchy up to this Court in a suit for possession filed by Simru against him in respect of this very house. Suit for possession has already been decreed against Rohtash. In the written statement filed in the present case by the defendant, a

categoric stand has been taken in para No.4 of the written statement that the defendant had earlier filed suit for possession of this house against son of the plaintiff i.e. Rohtash, which was decided by the Civil Judge (Jr.Divn.) Chandigarh on 21.4.2006, decreeing the suit in favour of present defendant and he was held entitled to seek possession of the tenement in question from the son of the plaintiff i.e. Rohtash. Defendant has denied that Rohtash has shifted to this house to provide helping hand to the plaintiff, whereas, the fact is that Rohtash was never the member of the family unit of the defendant as he was having his own separate family including his wife, children and mother Balwanti. Rohtash was allotted a tenement bearing No.39 in Khuda Lahora, Chandigarh under the said scheme. As per section 24 of the said scheme, the allottee cannot sublet or assign or otherwise part with possession of the tenement or the site, but Rohtash with all ulterior motive sold away the said tenement to one Parshotam Lal for a sum of ₹ 6,000/- without permission of the competent authority and in violation of the rules of the scheme. Therefore, after illegally disposing of the said tenement, he with all ulterior motive wanted to grab property of his father through Balwanti and occupied the same under the pretext that Balwanti needs his help. As per order dated 21.4.2006, in a suit for possession, it has been held that defendant is entitled to seek possession of present tenement

from Rohtash. It has been proved in the aforesaid proceedings that the allotment of said tenement is in accordance with Section 3 (c) of the scheme. Married or an earning son above the age of 21 shall not be considered as family unit provided that such a person is living in a separate jhugi. The defendant has specifically pleaded in this para that Rohtash is above 21 years of age and is having his own family and children and was living separately in a jhugi and as such cannot be treated to be a member of family unit.

12. Learned counsel for the appellant has relied upon **Krishna Behari Goel vs. Raj Mangal Persad and others 1954 AIR (Allahabad) 182** to contend that suit for injunction filed by Balwanti is not to abate as it was not a suit of personal nature and Rohtash being legal heir is also entitled to protection under the decree. Learned counsel also cites **M.Rama Murthy vs. A.Chinnappa (dead) and others 1990 Civil Court Cases 782 (2) (A.P.)** to contend that in a suit for permanent injunction, on account of death of plaintiff, legal representatives have right to continue the suit. Such a right cannot be treated to be personal in character. Similarly in **Smt.Venkubai vs. the Assistant Commissioner, Sodam 1999 (1) Civil Court Cases 119 (Karnataka)** similar proposition was held by the High Court. The proposition was to the effect that a decree for injunction obtained by the plaintiff and in the event of death of plaintiff the

decree obtained by him can be succeeded by the legal representatives and such right of injunction cannot die with the death of plaintiff. The suit claiming injunction of this nature did not abate on the death of plaintiff and cause of action survived to the legal representative, who came in possession of the property in dispute.

13. Maxim “actio personalis moritur com persona” i.e. right to sue in respect of action where injured died during pendency of his claim includes loss of property. Whether right to sue survives to the legal representative of the deceased in respect of claim on account of loss to the estate held in affirmative by the Division Bench in **Joti Ram and others vs. Chaman Lal and others** 1984 A.C.J. 645.

14. The factual matrix involved in the aforesaid cases is totally different than the one involved in the present case. So far as maxim “actio personalis moritur com persona” is concerned, in a case of accident, if claim is based on loss to the estate of the deceased, legal representatives have all the rights to carry on with the claim petition.

15. In the present case, wife sought injunction against the husband being legally wedded wife. Such a right is purely a personal right and cannot be inherited by her son against whom father has already obtained decree of possession from the competent Court and that decree has already been upheld by

this Court. In such a situation, defendant is also a legal representative of the deceased-cum-allottee of the tenement. Rohtash being married and more than 21 years of age does not fall in the category of family unit and was also allotted a tenement which he had already sold in utter violation of the rules. Rohtash cannot protect his illegal living in the tenement in question particularly when there is a decree against him passed by the competent Court in a suit for possession. The scope of injunction is only to the effect that a person in a established possession may be dis-possessed in due course of law. Since due course of law is already existing in the form of decree for possession against Rohtash, therefore, by any stretch of imagination there cannot be any injunction in favour of Rohtash, who can not take benefit of the judgment cited in the context that injunction is not personal in character. In the present case, suit filed by Balwanti was in respect of relief of personal nature being legally wedded wife of Simru and, therefore, the protection, which was granted to Balwanti cannot be extended to Rohtash who does not fall under the category of family unit by any stretch of imagination being more than 21 years of age and was allotted separate tenement bearing No.39 in Khuda Lahora, Chandigarh, which he had sold to one Parshotam Lal for a sum of ₹ 6,000/- without permission of the competent authority. Therefore, the argument raised by learned counsel for the

appellant does not stand to reason. The defendant being one of the legal representative, has a right in the property in his own capacity being allottee as well as being legal representative of deceased Balwanti in the house in question. Even, if, Rohtash was impleaded as legal representative of deceased Balwanti that right was only to pursue the litigation and not to claim anything personal in nature as claimed by him. In the appeal, despite the fact that trial Court decreed the suit of Balwanti, in other words in the appeal, Rohtash has virtually sought declaratory relief that he be granted relief of permanent injunction in the capacity of legal representative of Balwanti despite the fact that a decree in a suit for possession is already existing against him. The trial Court has not gone into the title of the suit for the reason that it is a simpliciter suit for injunction filed by Balwanti seeking restraint against her husband from being dispossessed. The legal representative was only allowed to pursue the suit on behalf of Balwanti. The rights of Rohtash have already been determined by the competent Court in a suit for possession filed by his father. Therefore, relief of injunction in the present set of facts and circumstances of the case was only personal relief granted to her and on her death the same cannot be passed over to his legal representative Rohtash, who has already lost litigation in the competent Court.

16. In considered opinion of this Court the judgment and

decree passed by the lower Appellate Court does not require any interference by this Court. Resultantly, this appeal is found to be totally devoid of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

January 08, 2016
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