

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA No.5244 of 2015 (O&M)
Decided on: 16.02.2016**

Sandeep Singh

....Appellant

Versus

Ranjit Kaur

....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sherry K. Singla, Advocate
for the appellant.

REKHA MITTAL J. (Oral)

The present appeal lays challenge to the judgments and decrees dated 23.01.2014, passed by the learned trial Court and dated 21.04.2015, passed by the First Appellate Court, whereby the suit filed by the respondent has been decreed by the learned trial Court and the findings of the trial Court have been affirmed in appeal.

The facts relevant for disposal of the present appeal are that Ranjit Kaur, mother of the appellant filed a suit for mandatory injunction directing the appellant to remove his encroachment and hand-over possession of residential house measuring 541.08 square yards and for permanent injunction restraining the appellant from alienating, mortgaging or disposing of any part of the suit house in any manner whatsoever.

The plea of the respondent is that she purchased the suit house by spending her hard earned money and paid the installments to have a roof over her head so that she can lead a peaceful life at the fag end. She is a government employee, obtained a house loan for purchase of house and had to stay out of Nabha being in government service. Amanpreet Kaur wife of Sandeep Singh filed a false complaint dated 02.08.2007, before SHO P.S. Women Cell Mohali, Phase-I, Mohali, against the appellant. A compromise was arrived at and the complaint was disposed of on 04.09.2007. Prior to this, Amanpreet Kaur also filed a similar complaint in connivance with her husband in Police Station Kotwali Nabha, and the matter was compromised which was recorded in Daily Diary Register of Police Station Kotwali Nabha on 17.06.2007. The respondent, being mother of the appellant gave two rooms to the appellant and his wife for stay as licensee. It was agreed that the appellant and his wife shall vacate the rooms as and when required by the respondent. The remaining house remained in possession of the respondent, but on the request of the appellant and his wife, she allowed the respondent to use whole of the house as licensee. The appellant and his wife, at the instance of his in-laws family asked the respondent to transfer the house in dispute in the name of appellant's wife to which she did not agree. To avoid any further dispute, she stopped living in the house, shifted to Patiala and started residing in a rented house. The

personal belongings and other domestic articles of the appellant remained in the house in dispute. On 05.06.2007, when she came to pick-up her personal belongings, etc. the appellant and his wife threatened that a false complaint against her shall be got lodged from Amanpreet Kaur. The appellant has a revolver and many a times threatened to eliminate the respondent. The respondent has retired from government service on 30.11.2010 and as such she requires the house in dispute for her residence.

The appellant filed the written statement, contested claim of the respondent with the averment that she is neither the owner nor in possession of any part of the suit house. Under the garb of mandatory injunction, she is seeking the relief of possession, therefore, the suit is liable to be dismissed on this score. The respondent is liable to affix the requisite Court fee on the market value of the suit property.

On merits, he has admitted that respondent is his mother but denied that she has purchased the suit house with her income. It is averred that the suit property was purchased by the answering defendant by spending amount from his own pocket in the name of respondent being his mother. The respondent is a government employee and generally remains out of station and at present she is posted at Patiala and is permanently residing there. The respondent and wife of the appellant do not have cordial relations and there arose dispute between the respondent and his

wife which was later got compromised. It is further pleaded that oral family settlement took place between the parties and the respondent gave the suit property to the appellant accordingly. All other material averments of the plaint have been denied with a prayer for dismissal of the suit with costs.

The learned trial Court, on due consideration of the pleadings of the parties, issues framed for determination, evidence adduced on record and rival submissions made by counsel for the parties, eventually accepted claim of the respondent and the appellant was directed to hand-over possession of the suit house to the respondent within two months and he was further restrained from alienating, mortgaging or disposing of any part of the suit house. The judgment and decree passed by the trial Court has been affirmed in appeal as the appeal preferred by the appellant did not find favour with the Court of Additional District Judge, Patiala.

Still feeling aggrieved, the present regular second appeal has been preferred by the appellant.

The sole submission made by counsel for the appellant is that as per averments set-up in the plaint, the respondent had given two rooms to the appellant-defendant and his wife for use as licensee who agreed to vacate the rooms as and when required by the respondent-plaintiff. It is argued that Amanpreet Kaur wife of the appellant has not been impleaded as a party, therefore, suit filed by the respondent-plaintiff is liable to be dismissed for want of

impleading necessary party.

I have heard counsel for the appellant, perused the records and find no merit in the appeal.

The respondent has stated that she had given two rooms to the appellant and his wife for living as licensee but it does not mean that she created license in favour of her son as well as daughter-in-law. This apart, counsel for the appellant on a careful appraisal of the written statement has fairly conceded that no such plea was raised by the appellant that the suit is bad for non-joinder of necessary party i.e. Amanpreet Kaur. The suit property is, admittedly, owned by the respondent-mother. Due to some dispute between the respondent and her daughter-in-law (wife of the appellant), she being the mother agreed to permit the appellant along with his wife to stay in a part of the suit house, but later allowed them to use the entire house. There is no denial that the respondent-mother has retired from government service in the year 2010. When the respondent-mother asked the son to vacate the house, she got a cold response compelling her to institute the proceedings in the Court. The suit remained pending before the trial Court for approximately four years but fortunately the appeal came to be decided by the Additional District Judge, Patiala, within a short span of about six months. If the contention of the appellant is allowed to be sustained on a mere technicality, it would be nothing short of increasing mental agony of a mother who

permitted her son along with his family to stay in the house, may be for the reason that the respondent at that time was in government service, posted at Patiala and did not require the house for her personal use. As the appellant has failed to prove any legal right to continue in possession of the suit house, I do not find any error much less illegality in the findings recorded by the trial Court and duly affirmed in appeal when otherwise no substantial question of law arises for adjudication.

For the foregoing reasons, the appeal is dismissed *in limine*. No order as to costs.

(REKHA MITTAL)
JUDGE

16.02.2016
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