

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2260 of 2017 (O&M)

Date of decision: 26.07.2017

Virender and another

... Appellants

Vs.

Angoori Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Gaurav Gupta, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present regular second appeal, at the hands of defendants No.1 and 2, is directed against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for mandatory injunction with consequential relief of permanent injunction, filed by the plaintiff-respondent No.1 was decreed and first appeal filed by the defendants also came to be dismissed by the learned first appellate Court.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that the plaintiff filed the suit seeking decree of mandatory injunction directing defendants to vacate the suit property and hand over the peaceful possession of the plaintiff and also the consequential relief of payment of maintenance of Rs.15,000/- per month had been sought by the plaintiff for the payment of electricity bills, house tax and other necessary

expenses. A decree of permanent injunction had also been sought restraining the defendants from dispossessing the plaintiff from the house in question and not to interfere in the peaceful possession and enjoyment thereof. It was averred that the plaintiff was owner in possession of the House bearing No.200, touching the rasta towards southern side and bearing electricity meter No.1388 since the life time of her husband. Plaintiff had been using the same peacefully as owner in possession and constructed the house from their own funds and investments and since then both of them were residing in the suit property. It was further averred that defendants being strong headed person had been intending to dispossess the plaintiff from the suit property illegally and unlawfully. It had been further averred by the plaintiff that she had been paying electricity bill, house-tax and other expenses continuously and rather she had no source of income to survive herself due to the disease, she had to cope with medicine and expenses, she has to bear for her own survival. Plaintiff had requested several times for payment of maintenance from the defendants, but he was the one who always had beaten the plaintiff who was his mother and old lady. It had also been averred that the plaintiff intended to gave some portion of the house on rent to made her expenses for maintaining herself and for the necessary repair of the house in question, but defendant No.1 used filthy language and had thrown the house hold articles of the plaintiff and threatened to dispossess from the suit property. Further, it had been averred that prior to filing of the suit, husband of the plaintiff filed suit against the defendants for ejectment, but defendants No.1 and 2 got compromise and assured to the husband of the plaintiff that they would not gave beating to them and therefore, the defendants had always refused to pay heed to request of the plaintiff and

therefore, the final cause of action accrued in her favour to file the suit.

Having been put to notice, defendants appeared and filed their contesting written statements, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled for a decree of mandatory injunction directing the defendants to vacate the suit property and handover the vacant and peaceful possession to plaintiff and further directing the defendants to pay the maintenance of Rs.15,000/-? OPP
2. Whether the plaintiff is entitled for a decree of permanent injunction restraining the defendants from dispossessing the plaintiff from the suit property and interfering into the peaceful possession of the plaintiff? OPP
3. Whether the present suit is frivolous not maintainable in the present form? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Whether the suit of the plaintiff is bad for non-joinder of necessary parties? OPD
6. Whether the plaintiff has concealed the true and material facts and has not come to the court with clean hands? OPD
7. Relief.

In order to prove their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence.

After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has proved her case. Accordingly, suit of the plaintiff for mandatory injunction with consequential relief of permanent injunction was decreed by the learned trial Court vide its impugned judgment and decree dated 16.03.2016, directing the defendants to hand over the vacant and peaceful possession of the suit property to the plaintiff. Defendants were further restrained from dispossessing the plaintiff and interfering in her peaceful possession over the suit property. Defendants filed their first appeal, which also came to be dismissed by learned first appellate Court, vide its impugned judgment and decree dated 23.03.2017. Hence this regular second appeal at the hands of unsuccessful defendants No.1 and 2.

Heard learned counsel for the appellants.

Relationship between the parties is not in dispute. Plaintiff-respondent No.1 is the mother of defendant-appellant No.1 and mother-in-law of defendant-appellant No.2. Ownership of the plaintiff over the suit property is not in dispute. Defendants-appellants were not claiming the ownership over the suit property. Possession of the defendants would be at the most that of licensees and they would acquire no right in the suit property, in spite of their long possession. Having said that, this Court feels no hesitation to conclude that the learned Courts below rightly decreed the suit of the plaintiff, by passing the impugned judgments and decrees and the same deserve to be upheld.

In spite of the fact that defendants had no right to remain in possession over the suit property and they had never been in settled possession thereof, plaintiff still resorted to the due process of law and filed the present suit

against the defendants. Once the suit of the plaintiff was based on her undisputed title, she was bound to succeed. That is what has been held by the learned Courts below. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***Rame Gowda (D) by LRs Vs. Mr. Varadappa Naidu (D) by LRs and another, 2004 (1) SCC 769.***
2. ***Maria Margarida Sequeria Fernandes and others Vs. Erasmo Jack de Sequeria (Dead) through LRs and others, 2012 (5) SCC 370.***
3. ***Behram Tejani and othes Vs. Azeem Jagani, 2017 (2) SCC 759.***
4. ***Aarti Vs. Aruna Gautam and others, 2014 (5) Law Herald (SC) 4260.***
5. ***Inder Singh Vs. Smt. Sarti and another, Law Finder Doc Id # 631580.***

Before arriving at his judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as evidence brought on record, in the correct perspective. The relevant and cogent findings recorded by learned first appellate Court in paras 11 and 12 of the impugned judgment, which deserve to be noticed here, read as under: -

“After hearing the submissions of both the counsels, now first plea

*comes before this court as to whether appellants are the member of the family and co-parcenar or not. It is clear that DW-1 while appeared in the witness box deposed that he is not the owner of the suit property. He also deposed that electricity connection is also in the name of his parents. He further deposed that he got installed sub-meter in the premises. He has been debarred by his father. He has also deposed that he has been residing in the property forcibly. He also shown his reluctance in the cross-examination to vacate the premises. It is clear from the statement of this very witness that appellant Virender is adamant to occupy the property of respondent. It is also clear that PW-1 while appeared in the witness box deposed that she had purchased the property from the amount taken on credit basis thirty years back. Since the document is more than 25 years old. Hence, it will not be justified to raise any question upon the authenticity of PW-1. It is also clear that appellants are also not required to give unwarranted treatments to his mother. It is also clear that as per the allegations of respondent appellants have even been thrashing his mother on the various occasions. It is also clear that Virender is just stubborn type of person. Hence, there is no proof available on the file that Virender ever been the member of the family. Moreover, in cross-examination he himself has admitted that he has been debarred by his father from the sons-ship. Accordingly, authority relied upon by learned counsel for the appellants titled as **Major Singh and another Versus Baljit Kaur and others 2016(3) RCR (Civil) 1025***

(P&H) is not applicable to the present facts and circumstances of the case. In view of what has been discussed above, this plea stands decided against the appellants and in favour of the respondent.

Now next plea comes before this court as to whether appellants are entitled to retain the possession of the property or not. It is clear in this case that the respondent is the owner of the property. It is also clear that she has not inherited this property from her husband. It is further clear that she herself is the independent owner of the property and it is also settled law that the owner has its right to use the property in any manner its likes. It is also clear that once the sale deed is registered in the name of respondent it is a clear cut constructive notice to the complete society that she is owner. There is no document available on the file that this property is co-parcenary property of the respondent. She had not receive this property from the grandfather of the appellants. She herself had purchased during her life time. It is also clear that children are duty bound to be dociled towards their parents. It is clear that the present appellant is not even dociled towards his parents. He has not respect of his mother. There are allegations also that he has been thrashing his mother on the various occasions and adamantly residing in the suit property without consent and wish of the respondent. Hence, in view of what has been discussed above, I do not find the appellant Virender even member of the family also. Hence, this plea is also

decided against the appellants and in favour of the respondent.”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments and decrees passed by both the learned Courts below. Further, learned counsel for the appellants could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

26.07.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No