

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**C.Ms. No.12768-12770-C of 2015 in/and
RSA No.5365 of 2015
Date of Decision: 15.02.2018**

Parsan Kaur (since deceased) through ... Appellant
legal heir Mrs. Vikramjeet Kaur

Versus

Dharminder Singh & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Raman Mahajan, Advocate,
for the appellant.

RAMENDRA JAIN, J.(Oral)

C.M. No.12768-C of 2015

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed. Delay of 68 days in refiling the appeal is condoned.

C.M. No.12770-C of 2015

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed. Delay of 1 day in filing the appeal is condoned.

RSA No.5365 of 2015(O&M)

Parsan Kaur after remaining unsuccessful before both the courts below filed this regular second appeal challenging judgment and decree of the First Appellate Court dated 30.08.2014, affirming the judgment and decree of the trial Court dated 26.02.2011, whereby her claim to declare her as owner of the house in dispute to the extent of 1/5th share was rejected, while granting her relief of joint possession over the same.

Put pithily, appellant Parsan Kaur filed a suit for declaration to declare her and respondents no.1 to 4 as owners in possession of House No.1090, Sector 37-B, Chandigarh (hereinafter referred to as 'house in dispute') to the extent of 1/5th share each claiming that the same was a Joint Hindu Family property and not exclusively owned by her son respondent No.1-Dharminder Singh (defendant No.1). She also sought relief for permanent injunction restraining respondent No.1 from selling, mortgaging, gifting, transferring and alienating the house in dispute.

According to her, the plot over which house in dispute was constructed was purchased by her in public auction from Chandigarh Administration in the year 1978 in the name of her son Dharminder Singh-respondent no.1. At the time of purchase of the plot, defendant no.1 was a student and only 18 years old and thus, he had no source of income of his own. Her husband was a Tehsildar at that time and she herself was a government employee and retired as District Education Officer, Chandigarh. She got constructed the house on the said plot with her own income and salary of her husband. At that time, her son respondent no.1 was in Holland. Therefore, the house in dispute was a joint Hindu Family property of the parties.

A family settlement had also arrived at between the parties in 1986. She was in possession of two rooms along with bathroom, toilet, kitchen and part of open backside courtyard on the ground floor in the house in dispute and other half portion was in possession of her son respondent No.1. A dispute took place between her and her son respondent No.1, which culminated in a mutual settlement dated 31.08.1998 regarding possession of the house in dispute.

Upon notice, respondent No.1 contested the suit. He by denying the title of the appellant over the suit property claimed him to be exclusive owner of the house in dispute pleading that it was a self-acquired property, being purchased by him and raised construction from his own funds. It was mutually settled that her mother i.e. appellant and respondent no.4 can use the part of house during their stay, but permitting them as such does not give any right to her mother to claim her ownership.

Remaining respondents admitted the claim of the appellant.

The trial Court after holding trial decreed the suit partly, only giving relief to the appellant for joint possession over the house in dispute. Her claim qua declaring her owner to the extent of 1/5th share along with her other children was declined vide judgment and decree dated 26.02.2011.

Being aggrieved, the appellant approached the First Appellate Court, but remained unsuccessful as her appeal too was dismissed vide judgment and decree dated 30.08.2014.

During the pendency of this appeal, appellant-Parsan Kaur expired. Her daughter Vikramjit Kaur, who was earlier defendant, moved an application to bring her on record as legal representative of Parsan Kaur and has been brought as such.

Learned counsel for the appellant contends that both the Courts below failed to appreciate that respondent No.1-Dharminder Singh being 18 years old at the time of purchase of plot in dispute was not able to purchase the same in the year 1978 as he was not having any income at that time. The construction on the house in dispute was raised by spending money from their own pocket by the deceased appellant and her husband, who both were in Government jobs.

I have given thoughtful consideration to the submissions made by learned counsel for the appellant.

Undisputedly, respondent No.1 was major at the time of purchase of the plot in dispute. His stand that though he was a student, but was an earning hand by doing a part time job of photographer could not be repelled by the appellant during trial. Admittedly, the deceased appellant and her husband were both in Government jobs. Therefore, according to service rules, they were required to obtain prior permission from their respective departments to purchase the plot in dispute. No such permission was brought on record. The first Appellate Court has rightly observed that in the absence of any evidence what to call of convincing and cogent that the appellant has purchased the plot in question by her own funds, she cannot be declared as owner to the extent of 1/5th share. For ready reference, relevant findings of the First Appellate Court are reproduced as under:-

“14. From the rival arguments, it is made out that the dispute in the present case is between mother and son. Mother claims that the house in dispute was purchased by her own funds, although the name therein was of the son (defendant No.1). The plaintiff-mother is claiming 1/5th share in the house in dispute and the other to be vesting with her three children and husband as the property in dispute is alleged to be Joint Hindu property. The record with the Chandigarh Administration as proved by Devinder Kumar, Senior Assistant, Office of Estate Office, Chandigarh, showed that the same was purchased in open auction by defendant No.1 Dharminder Singh and that too by giving a bid personally. In the revenue record or the record of the Chandigarh Administration, the name of the owner of the house in dispute is admittedly of

defendant No.1 Dharminder Singh. Ostensibly, the defendant No.1 is the owner of the house in dispute. At this juncture, it can only be assumed that he was an adult at that time and could have earned money for purchasing of the house from the profession of photography as well as earning made by him while staying in Holland, where he admittedly was sent by none else, but by the appellant-plaintiff. The defendant No.1 has claimed that at that moment, he was having a cash amount of ₹20,000/- at his disposal and later on he spent ₹2 lacs for the construction of the house. Now one fact is admitted by the plaintiff that the plot in question was allotted in an open auction to defendant No.1 and he was adult at that juncture. There is also no proof of the fact that the funds for the payment in auction was made available by the plaintiff or her husband and that too by withdrawing sufficient amounts from their bank accounts. Certainly, they should be in possession of documentary proof, as they were both government servants and any money spent by them i.e. for sum of more than ₹5,000/-, permission must have been sought by them for doing so. No permission as per 'Conduct Rules' was obtained by the plaintiff or her husband for purchasing of the plot or the house in dispute. It was for the plaintiff to prove that the funds for purchasing of the house was made available by her and her husband. In this situation, adverse inference with regard to non providing of entire funds for the purchase of the house and construction of the same is to be drawn against the plaintiff. Plaintiff and her husband defendant No.4 admittedly were government servants and every pie more than ₹5,000/- spent by government servant has to be made with the approval of their department. No

permission of Department show that money was not spent by them.

18. XXX XXX XXX XXX

The plaintiff has also failed to show that the funds for raising the construction or even for buying the plot was arranged by her from her own accounts. The trial Court has thus rightly declined the relief of declaration sought by the plaintiff to the extent that she is the owner of 1/5th share in the house in dispute. The trial Court has thus rightly held that the plaintiff was not entitled to the relief of injunction restraining the defendant No.1 from alienating the suit property because she has failed to prove herself to be the owner of the same. On the contrary, it is established that the plot in dispute and the building thereupon stands in the name of defendant No.1. Lastly, the plaintiff having failed to show that she has arranged funds for the purchase of the plot as well as of raising of the construction, so she is not entitled to take the plea that the property is belonging to her but they were benami in the name of defendant No.1 and she continued to be the real owner of the same.”

Learned counsel for the appellant is not able to point out any infirmity in the above findings of the First Appellate Court affirming the findings of the trial Court.

Therefore, finding no merit in the appeal, the same is hereby dismissed.

15.02.2018
monika

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No