

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

RSA No.3233 of 2019 (O&M)
Date of decision: 16.10.2019

Abhinav Khosla

... Appellant

Versus

Deepika Khosla and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Khushwant S. Mann, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

CM No.12845-C of 2019

Heard.

Allowed as prayed for. Documents referred to in the application are taken on record, subject to just exceptions.

Disposed of accordingly.

Main Case

Challenge in the present appeal has been directed against judgment and decree dated 21.05.2019 passed by the Additional District Judge, Panchkula whereby appeal against judgment and decree dated 07.04.2018 passed by the trial Court was accepted, judgment and decree impugned was reversed and suit filed by the appellant/plaintiff for declaration, permanent injunction and partition was dismissed.

The present is an unfortunate litigation between Abhinav Khosla ex-husband of respondent/defendant Deepika Khosla whereas

defendants No.2 and 3 are the two sons born out of wedlock of Abhinav Khosla and Deepika Khosla. The dispute pertains to plot No.1907-P, Sector 21, Panchkula, allotted in favour of Deepika Khosla by the Haryana Urban Development Authority, Panchkula (in short 'the HUDA'). The property was transferred by Deepika Khosla in favour of her two sons Anshuman Khosla and Dhruv Khosla and there is re-allotment in favour of defendants No.2 and 3.

The appellant/plaintiff staked his claim to the suit property on the premise that property was purchased in the name of defendant No.1 only for the purpose of convenience as he was looking for employment in Dubai and could not frequently travel to complete necessary formalities. He purchased the property out of his savings by payment of four instalments to HUDA between August, 2001 to August, 2004, last instalment was paid in the middle of 2006. There is also reference to dispute between the husband and wife in respect of some property at Delhi allotted by Delhi Development Authority (in short 'the DDA'). It is averred that appellant is entitled to suit property which was purchased out of his hard earned money. He was the only earning member of the family till loss of employment on 04.07.2009 whereas defendant No.1 had no source of income when the property was purchased. Though defendant No.1 has no share in the property but the plaintiff is limiting his claim to 4/5th share and agrees to forsake 1/5th share in favour of defendant No.1.

Counsel for the appellant would argue that the appellate Court in para 20 of the judgment has noticed details of payments reflected in the

accounts statement Ex.DW2/C, produced by a witness examined from the office of HUDA, Panchkula. It is argued that six payments mentioned at Sr. Nos.2 to 8 were made from NRE account in the name of appellant and defendant No.1 which was opened on 02.12.1996 in Canara Bank, Sector 8-C, Chandigarh. It is further argued that since Deepika Khosla was not working in Dubai and appellant was the only earning member of family of the parties, the appellate Court has committed a serious error by holding that it has not been proved that amount in the joint account was deposited only by the appellant. It is further argued that provisions of Benami Transactions (Prohibition) Act, 1988 are not applicable/attracted in the present case, therefore, there is no bar in law for the appellant to establish his plea that suit property was purchased in the name of Deepika Khosla with the funds invested by the appellant just for the sake of convenience. It is further argued that no such plea was raised by respondent No.1 that suit property was purchased by the appellant in the name of Deepika Khosla for her benefit being her husband.

I have heard counsel for the appellant, perused the paper book particularly the judgment impugned and copies of documents produced by filing CM No.12845-C of 2019.

Indisputably, the application for allotment of aforesaid plot was submitted by Deepika Khosla with initial deposit of Rs.59,000/-. The appellant has admitted that initial payment of Rs.59,000/- was made by father of Deepika Khosla though he made an attempt to state that the said amount was repaid by him to father of Deepika Khosla without any specific

pleading and evidence in this regard. This fact alone falsify plea of the appellant that application for allotment was submitted in the name of Deepika Khosla just for the sake of convenience.

The appellate Court, in para 17 of the judgment, has noticed that the plaintiff in his cross examination deposed that cost of the plot was Rs.3,28,000/- in addition to Rs.59,000/-. He had stated that Rs.4,78,000/- including interest and Rs.59,000/- was paid to HUDA. Counsel for the appellant has not disputed these factual observations made by the appellate Court. However, perusal of statement of account Ex.DW2/C would reveal that total amount of Rs.11,12,966/- was deposited starting from January, 1999 till 2017. No payment was made in April, 2006 as pleaded by the appellant/plaintiff. The appellant had raised a plea that four instalments were paid to HUDA between August, 2001 to August, 2004 and last instalment in middle of 2006. From 2001 till August, 2004, four instalments were paid and the amount was remitted from account in Canara Bank. The appellant was not even aware of payment made from account in Canara Bank in the years 1998 to 2000. He was also not aware of payments made in 2010 and 2013 in a suit instituted in the year 2014 though the last payment was made in the year 2017. All these facts create chinks in the story brought-forth by the appellant that suit property was purchased in the name of defendant No.1 because of convenience to the appellant/plaintiff.

Indisputably, account No.628 in Canara Bank, Chandigarh is an NRE account in the joint name of Abhinav Khosla and Deepika Khosla. Though the appellant examined Sanchit Doman, officer from Canara Bank

Sector 8-C, Chandigarh but nothing was produced by the witness that money in the said account was received out of funds held by the appellant in Dubai. The appellant in his cross examination has admitted that Deepika Khosla was also working in Dubai though he had stated that she was working for a year or so. Since the plaintiff had approached the Court for seeking declaration, permanent injunction and partition of suit property, it was his obligation to establish that entire funds for purchase of property were provided by him but he has failed to do so. Even if the appellant being husband of Deepika Khosla has made some contribution for purchase of the suit property by Deepika Khosla, he, at best, could take recourse to appropriate proceedings for recovering the said amount from Deepika Khosla. At the same time, he cannot assert his claim qua ownership of the suit property in view of averments made in the plaint and evidence on record. In this view of the matter, I do not find an error much less perversity in the impugned judgment rejecting claim of the appellant/plaintiff that he is entitle to 4/5th share in the suit property and can get the same partitioned by metes and bounds.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

16.10.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No