

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.6433 of 2018

Date of Decision : 27.09.2019

Paramjit Singh

.....Appellant

Versus

Baljinder Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Narinder S. Lucky, Advocate for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the respondents/plaintiffs was decreed by the trial Court, vide judgment and decree dated 10.02.2016, as the appeal preferred against the said decree failed and was dismissed on 08.05.2017, the appellant/defendant is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiffs prayed for a decree for injunction restraining the defendant, his relatives and supporters from dispossessing the plaintiffs illegally from two bed rooms and toilet depicted in red colour in the site plan appended with the plaint which formed part of house No.26, Gali No.6, bearing khasra No.6002/1565, situated at Anteryami Colony, Sultanwind Urban Amritsar.

In brief, the case of the plaintiffs has been: that defendant is the

husband of plaintiff No.1 and father of plaintiffs No.2 and 3. The suit property was ownership of Gursharan Kaur, who happened to be the mother-in-law of plaintiff and grand mother of plaintiffs No.2 and 3. Post death of Gursharan Kaur, her estate was succeeded to by her husband Gurbachan Singh, Paramjit Singh (defendant) and her daughter Harjit Kaur in equal share. The defendant was maltreating the plaintiffs for no reason and was addicted to all sorts of vices. The plaintiffs occupied and were in possession of two rooms and a toilet shown in green colour, whereas defendant was in possession of a portion shown in red colour, and the yellow portion was being used by the parties commonly. For, the defendant threatened to dispossess the plaintiffs, thus, the suit.

The defendant in defence pleaded *inter alia* that he had a share in the suit property. The relationship between the parties was not disputed. In fact, plaintiff No.1 was not keen to live with the defendant, and thus, was not ever performing her marital obligations. Further, the plaintiffs were not in possession of any specific room or toilet but just residing with the defendant in the house in question being his wife and children. In fact, the defendant never threatened to dispossess the plaintiffs, therefore, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record both the Court concurrently concluded that onus to prove that plaintiffs were indeed in possession of the disputed portion of the house and entitled to injunction was upon themselves. Plaintiffs examined Aviar Singh PW1 who proved documents Ex.P1 to Ex.P6. Ex.P1 was the site

plan of the property whereas Ex.P2 to Ex.P6 were the photographs that showed plaintiffs to be in possession of the disputed portion. Kulwant Kaur (PW2) proved the claim of the plaintiffs in her deposition. Likewise, even plaintiff-Baljinder Kaur appeared as her own witness and proved on record various documents to substantiate her possession. A copy of the ration card Ex.P8 and Ex.P9, the copy of electricity bills as Ex.P10 as also the receipts Ex.P13, proved that the plaintiffs were in occupation of a portion of the house in question. Likewise, acknowledgment of Swidha Centre Ex.P15, copy of adhaar card Ex.P18 and *jamabandi* for the year 2006-07, corroborated her claim. In any case, the defendant in para No.6, admitted in the written statement that plaintiff No.1 being his wife and children were residing with him. As regards the restraining the defendant from alienating the suit property it was observed that copy of the order dated 18.01.2014 (Ex.P7) proved on record by the plaintiffs showed she was awarded maintenance in proceedings under Section 125 of Cr.P.C. A copy of another order dated 20.01.2015 Ex.DX also brought on record also showed that plaintiffs were granted maintenance in terms of the provisions of Section 24 of the Hindu Marriage Act in divorce petition filed by the defendant. Thus, in terms of the decision of the Supreme Court in **(Komalam Amma Versus Kumara Pillai Raghavan Pillai & others)** 2009 AIR SC 636, wherein it was held that the right to reside in the matrimonial home was a part and parcel of wife's right to maintenance and, therefore, applying the ratio of law laid down in the said decision it was concluded that plaintiffs were entitled to not only reside in the suit property

but also for injunction restraining the defendant from alienating the same.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions recorded by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent finding recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

27.09.2019

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No