

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

**RSA NO. 819 OF 2020 (O&M)
DATE OF DECISION : 02.03.2020**

Neelam Singla

...Appellant

versus

Suresh Kumar Singla and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Chand Ram Olla, Advocate,
for the appellant.

Mr. Parminder Singh, Advocate,
for respondent No.1.

ARUN MONGA, J. (ORAL)

Having suffered concurrent adverse findings by the two Courts below, the defendant/appellant is before this Court in Regular Second Appeal assailing the judgment and decree dated 02.07.2018 passed by the trial Court as upheld by the First Appellate Court vide its judgment and decree dated 23.01.2020.

2. Succinct factual matrix as noticed by the First Appellate Court first. Plaintiff filed a suit claiming that he along with father Moti Ram Singh (since deceased) had purchased House No.495-R, Model Town, Karnal in equal shares vide registered sale deed bearing No.698 dated 22.04.1981. His father executed a Will bequeathing his share in the said house in favour of his other son Ramesh Kumar. On the basis of said Will,

Ramesh Kumar sold his half share in the house to one Charanjit Singh. The house was divided into two parts by raising wall. Plaintiff was in possession of three bed rooms, two stores, kitchen, bathrooms, two toilets, courtyards in front and back, covered verandah and open passage. Before sale of the other portion owned by Ramesh Kumar to Charanjit Singh, defendants No.1 and 2 being widow and daughter of late Moti Ram were residing there. After selling the portion to Charanjit Singh, possession of same was also handed over to him. Defendants requested the plaintiff and he allowed them to live in his portion as licensee. Now the defendants have refused to vacate the said portion and deliver the possession to plaintiff. Hence, the suit.

3. Upon notice, defendants filed written statement, inter-alia, taking preliminary objections regarding maintainability of suit; locus standi; cause of action; estoppel and valuation. On merits, it was pleaded that suit property was purchased for a sum of ₹1,05,000/- out of which contribution of plaintiff was just ₹40,000/-. The ancillary expenses were borne by Moti Ram. It was last wish of Moti Ram that Tara Devi- defendant No.1 shall be allowed to reside in the house in dispute till her death and plaintiff had agreed to that. It was further pleaded that being son it is the duty of plaintiff to maintain his mother defendant No.1. But since he was remiss in his duty, defendant No.1 was forced to call her divorcee daughter (defendant No.2) to stay with her.

It was denied that the defendants were allowed to reside in the

portion of the house as licensee. It was pleaded that defendants were residing in the suit property since very inception. Other allegations were denied.

4. Replication was filed reiterating the averments made in the suit and denying the allegations made in the written statement.

5. Based on the rival pleadings, following issues were framed :-

1) Whether the plaintiff is entitled to a decree for mandatory injunction ? OPP

2) Whether the plaintiff has got no cause of action and locus standi to file and maintain the present suit? OPD

3) Whether the suit of the plaintiff is not legally maintainable in its present form ? OPD

4) Whether the plaintiff is estopped by his own act and conduct to file and maintain the present suit? OPD

5) Whether the plaintiff has not come to the Court with clean hands and suppressed true and material facts from the Court ? OPD

6) Relief.

6. In order to prove their case and to discharge their onus as per the issues framed *ibid*, the parties to suit adduced their respective evidence.

7. Based on the collective evidence adduced by both the parties and upon appreciation thereof, the trial Court decreed the suit of plaintiff.

8. The First Appellate Court agreed with the findings rendered by the trial Court and upheld the judgment and decree passed pursuant thereto.

9. I have heard learned counsels for the parties and have perused the judgments and decrees of both the Courts below.

10. The relevant extract of the judgment of First Appellate Court for holding against the appellant/defendant is as under :-

"13. The star argument of the defendant-appellant is that she cannot be said to have been inducted as licensee by the plaintiff-respondent for the simple reason that she has been living in the house since 1985 when father of the parties was alive. It is further argued that being divorcee she had every right to live in the house of her father and that her position does not change after his death, therefore, she is living in the house in her own right and hence, cannot be asked to vacate at the whims of the plaintiff-respondent.

14. To my mind, there is no substance in the argument. Admittedly, the house was purchased by Shri Moti Ram and the plaintiff-respondent in equal shares. Since Shri Moti Ram bequeathed his share in

the house unconditionally to his another son Ramesh Kumar and Ramesh Kumar sold the same to the third person who has occupied the portion so sold, what remains is that the exclusive ownership of the plaintiff-respondent. Merely because the defendant being divorcee had been living in a portion of the house since the lifetime of Shri Moti Ram, it does not mean that she has a right to keep possessing the same against the wish of the plaintiff. Had Shri Moti Ram wished that the defendant-appellant should remain in possession of a portion of the house he would have provided for it, but instead he chose to bequeath his entire share in favour of the plaintiff-respondent (sic Ramesh Kumar) without putting any such conditions. The defendant-appellant raised no objection when Ramesh Kumar sold the portion of the house bequeathed to him by Shri Moti Ram. Therefore, she has no claim over the other half of the house which is owned by the plaintiff-respondent. It hardly matters that she had been living in the portion of the house even before the death of Shri Moti Ram. For all intents and purposes, she is in possession of the house as licensee.

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17. The objection that the suit for mandatory injunction was not maintainable and; that plaintiff-respondent ought to have filed suit for possession was rightly dismissed by the learned Civil Judge in view of the law laid down in "Harish Chand and others Versus Rameshwar Dayal Mangla alias Ramesh Chand" 2008 (3) Civil Court Cases 758. No pronouncement taking a

contrary view has been brought to the notice of the court. Therefore, the suit was rightly held to be maintainable. Consequently, the findings of learned Civil Judge on Issue No.1 and Issue No.3 are affirmed. The findings on Issue No.2, 4 and 5 having not been challenged, are to stay."

11. In view of the reasons contained aforesaid in the first Appellate Court judgment and having perused the grounds of appeal filed herein, I am of the view that no fresh grounds have been raised warranting interference of this Court in the present second appeal.

12. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No fresh ground warranting interference in this regular second appeal to disturb the concurrent findings of facts recorded by the Courts below, is made out.

13. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

14. In view of my discussion above and the reasons recorded therein, no interference is called for by this Court. The instant regular second appeal, being bereft of merit, is accordingly dismissed.

- 15. Pending application, if any, also stand disposed of.
- 16. No order as to costs.

(ARUN MONGA)
JUDGE

MARCH 02, 2020
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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable : | Yes/No |