

S.No.218

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

RSA No.2902 of 2014 (O&M)

Date of Decision:18.02.2020

Ram Sarup and another

.....Appellants

Vs.

Shiva

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Maninder Singh, Advocate for the appellants.

Rajbir Sehrawat, J.(Oral)

This is the second appeal by the defendants, of the original suit; challenging the concurrent judgments and decrees passed against him by both the Courts below in a suit for declaration; filed by the plaintiff for declaring him to be the owner in possession of House No.179, Lohgarh Chowk, Pinjore, as well as for prohibitory injunction against the defendants; not to interfere in possession of the plaintiff.

The brief facts giving rise to the present appeal are that the house in question was owned by Jaswinder Kaur, who was the mother of the plaintiff. The said house was purchased by her vide sale deed dated 10.07.1998. The mother of the plaintiff had re-constructed the said house after purchasing the same. The said re-construction was done by mother of the plaintiff with the funds provided by his maternal grandfather. Defendant No.1; who claims to be husband of the mother of the plaintiff, did not even contribute for the purchase of the house or for re-construction of the same. Jaswinder Kaur, i.e. mother of the plaintiff expired on 11.07.2004. She was survived by the plaintiff, who is her only son. At the time of death of his mother, the plaintiff was minor. Defendant No.1 had abandoned the

plaintiff and since then, the plaintiff was residing in the house of his maternal grandfather Khazan Singh. The plaintiff attained majority on 18.06.2007. Then the plaintiff came to know that defendant No.1 has got recorded half share of the house in question in his name; in the record of the revenue department. However, the mutation in the name of defendant No.1 is null and void. Still further, it was asserted that the defendants are the trespassers in the house in question. Therefore, they deserve to be prohibited from interfering in the possession of the plaintiff. The defendant No.1 claimed to be the husband of Jaswinder Kaur. However, the alleged marriage of Jaswinder Kaur with defendant No.1 was void because she was having a living spouse at the relevant time. Hence, defendant No.1 had no right, title or interest in any property left behind by Jaswinder Kaur, the mother of the plaintiff.

The suit filed by the plaintiff was contested by the defendants. It was asserted by defendant No.2 that he had given Rs.40,000/- to defendant No.1 in fiduciary relationship and he had purchased a plot in the year 1992; in the name of Jaswinder Kaur. The said plot was sold in the year 1998 and then the defendant No.1 purchased 3 Biswas plot, on which the house in question is situated, in Village Lohgarh, Tehsil Kalka, District Panchkula vide the sale deed dated 10.07.1998 in the name of deceased Jaswinder Kaur. It was further asserted that the house in question was purchased by defendant No.1 as Banami in the name of Jaswinder Kaur. The funds for re-construction were also provided by defendant No.1. The said Jaswinder Kaur was a divorcee, having obtained divorce from her earlier husband as per customs. It was further averred that though defendant

No.1- Ram Sarup was also married with one Salochana earlier, however, his marriage was also dissolved by Panchayat. Thereafter, the defendant No.1 married with Jaswinder Kaur. After the death of Jaswinder Kaur, maternal grandfather of the plaintiff had taken away plaintiff without the consent of defendant No.1. The house in question is owned and possessed by defendant No.1. Since plaintiff had misbehaved with defendant No.1, therefore, defendant No.1 had disowned the plaintiff by publishing notice in the newspaper.

To prove the respective assertions, the parties led their evidence. After appreciating the evidence, the trial Court decreed the suit filed by the plaintiff. Feeling aggrieved against the same, the defendants preferred appeal before the lower Appellate Court. However, the said appeal has also been dismissed by the lower Appellate Court. Hence, the present appeal has been preferred.

Arguing the case, learned counsel for the appellants/defendants has submitted that both the Courts below have wrongly held the marriage of the defendant No.1 with Jawinder Kaur as void. Being legally wedded husband of Jawinder Kaur, half share of the house in question was rightly mutated in the name of the defendant No.1. It is further submitted that the house in question is in possession of the defendants, therefore, the suit filed by the plaintiff could not have been decreed. Even if the suit of the plaintiff is to be decreed qua ownership, the suit could not have been decreed qua prohibitory injunction; since the defendants are residing in the house. Still further, it is submitted that Section 15 of the Hindu Succession Act has wrongly been applied by the Courts below. Even if the marriage of the

defendant No.1 with Jaswinder Kaur is taken to be void, still the plaintiff could not have been declared as exclusive owner of the suit property. In that situation, the earlier husband of the deceased- Jaswinder Kaur would be getting half share with the plaintiff. Hence, even the decree of ownership of 100% share in the house could not have been passed against the plaintiff.

Having heard learned counsel for the appellants, this Court does not find any substance in the argument of learned counsel for the appellants. It has not only come in evidence, rather, is the admitted case of the parties; that the deceased Jaswinder Kaur was earlier married with Jaswant Singh. Likewise, the present defendant No.1 was married with Salochana Devi. Hence, Jaswinder Kaur as well as defendant No.1; both; were having their living legally wedded spouses at the relevant time. This fact is not even disputed by either of the sides. The plea of the defendants has been that both, Jaswinder Kaur as well as defendant No.1; had obtained divorce from their respective spouses in the Panchayat as per their custom. The said divorce was recognised as per the custom. Hence, due to the customary divorce, their earlier marriages stood dissolved. Hence, with their new marriage, they became legally wedded husband and wife. However, the Court below has rightly not found any substance in these assertions and evidence of the defendant No.1. The trial Court has rightly observed that customary divorce cannot be recognized after enforcement of the Hindu Marriage Act. Moreover, any such custom has to be specifically pleaded and its long existence has to be proved by specific evidence qua existence of any custom. No such evidence of any such custom has been led by the defendants. Therefore, the marriage between defendant No.1 and

Jaswinder Kaur has rightly been held to be void marriage. On the basis of his claim of being husband of Jaswinder Kaur, the appellant- defendant No.1 cannot claim any right in the property left behind by Jaswinder Kaur. It is not even in dispute that the plaintiff is the real son of Jaswinder Kaur. Therefore, the plaintiff is, by any means, is entitled to inherit the estate left by Jaswinder Kaur. Although the necessary corollary of the above discussion would be that the earlier husband of Jaswinder Kaur could have been entitled to share in the property of Jaswinder Kaur, if otherwise his claim is proved in accordance with law. However, neither the said husband ever came forward to claim that property, nor is the present suit filed against him. Although the earlier husband of Jaswinder Kaur has been examined as a witness by defendant No.1, however, despite being in full knowledge of the proceedings of the case, he had chosen not to seek any claim qua the suit property. Therefore, the defendant No.1/ appellant cannot draw any benefit on account of applicability of Section 15 of the Hindu Succession Act.

Although the defendant No.1 claimed to have come in possession of the suit property as owner on the basis of the mutation entered in the revenue record, however, both the Courts below have rightly held that mutation does not confer any title in itself. Hence, the claim of the defendant No.1 qua the suit property on the basis of the mutation is also totally non-sustainable. The same has rightly been so held by both the Courts below.

Still further, although the counsel for the defendant No.1 has submitted that defendants are in possession of the house, therefore, the

prohibitory injunction could not have been issued against them, however, this Court does not find any substance in this argument as well. Needless to say that with the death of Jaswinder Kaur, the mother of the plaintiff, the plaintiff became owner of the suit property. He has never permitted the defendants/ appellants to reside in the house or to occupy the same in any capacity. Therefore, it is not even pleaded by the appellants that appellants/ defendant No.1 was in permissive possession of any kind. Hence, the possession, if any, of the appellants/ defendant No.1; has to be taken as of the trespasser only. Only that much has been held by both the Courts below. This Court does not find any illegality or perversity even in the findings in this regard.

No other point has been argued.

In view of the above, finding no merit in the present petition, the same is dismissed.

February 18, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No