

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Revision No. 3529 of 2016

Parkash
... Petitioner(s)

Versus

Smt. Raj
... Respondent(s)

2. Civil Revision No. 3530 of 2016

Parkash
... Petitioner(s)

Versus

Smt. Raj
... Respondent(s)

AND

3. Civil Revision No. 3583 of 2019

Parkash Saini
... Petitioner(s)

Versus

Dr. Raj Saini
... Respondent(s)

DATE OF DECISION: 18.05.2022

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ajay Jain, Advocate
for the petitioner(s).

Mr. Birender Singh Rana, Senior Advocate
with Mr. Vikas Saini, Advocate
for the respondent.

Anil Kshetarpal, J.

1. By this order, three inter-connected revision petitions, arising
between the same parties, shall stand disposed of.

The husband and wife are litigating in the Courts. The wife

filed a suit for grant of decree of permanent injunction restraining the defendant from dispossessing her as well as her children from the suit property. She claims that the property was jointly purchased by her and the defendant out of their joint funds and she had sold her gold jewellery in order to purchase the said property. The defendant denied the aforesaid assertions.

3. The trial Court, on examination of the pleadings, culled out the following issues:

- “1. Whether the suit property was purchased with joint fund of the plaintiff and defendant vide registered sale deed after marriage of the parties? OPP*
- 2. If issue No.1 is proved in affirmative, whether the plaintiff is entitled to injunction as prayed for? OPP*
- 3. Whether the plaintiff has got ½ share in the suit property? OPP*
- 4. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 5. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 6. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD*
- 7. Whether the suit is barred under Benami Transactions (Prohibition) Act, 1988? OPD*
- 8. Relief”.*

Both the parties led their evidence. Upon reading the issues

framed, it is evident that the question of entitlement of the parties is being decided.

5. The trial Court did not grant the relief of declaration, however, granted a limited relief of grant of injunction in favour of the plaintiff while restraining the defendant from forcibly dispossessing her and her children from the portion shown in violet colour in the site plan. The trial Court recorded a finding that the wife did not contribute any amount for the purchase of the property. Two first appeals were preferred, one by the plaintiff whereas the second was by the defendant-husband. During the pendency of the first appeal, an application was filed by the wife for permission to withdraw the suit with liberty to file a fresh one. She claims that she has failed to pray the relief of grant of decree of declaration. The First Appellate Court has allowed the application giving rise to Civil Revision No. 3529 and 3530 of 2016. Even the appeal filed by the husband has been dismissed in view of the order permitting the wife to withdraw the appeal.

6. Another revision petition i.e. Civil Revision No. 3583 of 2019 has been filed challenging the order passed on an application under Section 10 CPC for stay of the suit. This suit was filed by the wife after getting permission to file a fresh suit.

7. Heard the learned counsel representing the parties and with their able assistance, perused the paper-books of all the three revision petitions.

8. The learned counsel representing the husband contends that

parties, it is evident that the relief of declaration of title/ownership was inherent in the suit for injunction. He submits that it was not merely a suit for injunction. She claimed injunction on the basis of her ownership. The trial Court framed issues on the aforesaid basis. He submits that he has no objection if the suit is treated as a suit for declaration.

9. Per contra, the learned counsel representing the respondent submits that the wife has a right to withdraw the suit and file a fresh one because the previous suit suffers from a technical defect.

10. Before the Appellate Court, the plaintiff does not have any absolute right to withdraw the suit with permission to file a fresh one. Similar is the position with regard to the application seeking permission of the Court to withdraw the suit if the trial of the case has made substantial progress. This is a case where there is a decree passed by the trial Court deciding *inter se* rights. Once the learned counsel representing the husband consents that the Civil Court may decide on the relief of declaration based on the question of title itself while deciding the present suit, then there is no occasion for the wife to withdraw the suit. The parties have already led their evidence while being alive to the issues involved.

11. Consequently, the order, under challenge is set aside. Both the appeals filed, respectively, by the wife and husband shall stand revived. The First Appellate Court is directed to decide the question of ownership while deciding the first appeal.

12. Accordingly, the second suit filed by the wife shall stand disposed of in view of this order.

13. With the observations made above, all the three revision petitions are disposed of.

14. The parties through their learned counsel are directed to appear before the first Appellate Court on 31.05.2022. The First Appellate Court will make sincere endeavour for expeditious disposal of the appeals.

**(Anil Kshetarpal)
Judge**

May 18, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No