

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

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**RSA-1527-2022 (O&M)
Date of decision: 21.07.2022**

Mukesh Sharma

.....Appellant

Versus

Sanjay Sharma

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Ms. Saroj Bala, Advocate for the appellant.

MANJARI NEHRU KAUL, J. (ORAL)

Suit for mandatory injunction instituted by the plaintiff was decreed vide judgment and decree dated 21.12.2021 by the learned trial Court. The appeal preferred by the defendant to impugn the judgment and decree of the trial Court was dismissed by the first appellate Court vide its order dated 16.05.2022. The defendant is now before this Court in Regular Second Appeal.

Parties to the *lis* hereinafter shall be referred to by their original positions in the suit.

The facts in brief as pleaded by the plaintiff while filing the suit in question may be noticed. He was the owner of House No.3178, Ground Floor, Sector 52, Chandigarh (hereinafter referred to as 'the house in question') which had been allotted to him through EWS Housing Board, Chandigarh in the year 1999. The plaintiff on the request of his brother i.e. the defendant, as well as on the asking of his parents, allowed the defendant to reside in the house in question in the year 1999. However, the defendant shifted out in the year 2005 to Bangalore and thereafter to Bihar. The defendant returned to

Chandigarh after his marriage in the year 2009. On account of love and affection for his brother i.e. defendant, the plaintiff allowed him to reside with him in the house in question. The behaviour of the defendant was not cordial towards the plaintiff and his family which led to a lot of nuisance. Even though the defendant was requested by the plaintiff to behave and not to create any nuisance, however, the defendant refused to mend his ways and instead instituted a false civil case against the plaintiff. The plaintiff claimed that the defendant had been allowed to reside in the house in question by him only as a licensee, whenever the defendant was asked by the plaintiff to vacate the house in question, he would threaten to implicate the plaintiff in false cases. In his written statement, the defendant did not dispute that he and the plaintiff were real brothers, however, he alleged that the suit in question had been instituted by the plaintiff as a counter-blast to the civil suit filed by the defendant against him. The defendant submitted that after he initially came to Chandigarh in the year 1995, he along with his brother i.e. the plaintiff started residing in a rented accommodation and thereafter applied for allotment of a house under the EWS category. The plaintiff was allotted the house in question by the Chandigarh Housing Board (hereinafter called 'Board') and the defendant was appointed a nominee. The defendant alleged that he too had contributed towards the construction of the house in question and it had been mutually agreed upon by them that the plaintiff would reside in the front portion of the house while the defendant would reside on the backside. Till the year 2012, both the parties lived together and also purchased a property in Mohali in their joint name. It had been decided

between them that either the defendant would continue to reside in the house in question and the plaintiff would construct a house on the plot in Mohali. Since the plaintiff refused to give any share to the defendant in the house in question as well as in the plot purchased by them at Mohali, it led to a dispute between them. A compromise was thereafter effected between the parties in Bihar. It was settled that the plaintiff would construct a house on the plot in Mohali and would reside there. However, on return to Chandigarh from Bihar, the plaintiff went back on the assurance given to the defendant and instead asked him to vacate the house in question. The defendant thus claimed that he had every right to live in the house in question as his relationship with the plaintiff with respect to the house in question was not that of a licensee.

Upon consideration of the matter in issue and the evidence led, both the Courts concurrently concluded that the defendant had no right, title or interest be in possession of the house in question which stood allotted in the name of the plaintiff by the Chandigarh Housing Board and hence the plaintiff was entitled to be handed over the vacant possession of the house in question i.e. one backside room (in covered courtyard) and sharing latrine/bathroom of Ground Floor of House No.3178, Sector-52, Chandigarh.

Learned counsel appearing for the appellant/defendant has vehemently argued that both the Courts below failed to appreciate that though the house in question had been allotted vide allotment letter Ex.P1 in favour of the plaintiff, however, the defendant too had contributed in his own way in getting the house in question on lease for a period of 99 years from the Board which fact was duly supported by

the father of the parties who deposed before the Court below as DW2 not only qua the factum of both his sons i.e. the plaintiff and the defendant having applied for allotment of house with Board but also about an oral family settlement effected between them qua the house in question and the plot at Mohali. She further contended that it was evident that on account of some manipulations done by the plaintiff and after colluding with the officials of the Board, the plaintiff had also managed to get conveyance deed Ex.P12 in his favour from the Board.

I have heard learned counsel for the parties and perused the relevant material on record.

Learned counsel for the appellant/defendant miserably failed to bring to the notice of this Court any evidence on record qua the alleged manipulations and the collusion of the plaintiff with the officials of the Board. On a pointed query put to the learned counsel as to whether any such suggestions were even put to the plaintiff witnesses, she was unable to show anything in support thereof either from the evidence or even from the written statement of the defendant. Just because the defendant paid electricity bills and water charges while staying in a portion of the house in question would not make him an owner of the suit property. Still further just because he stands reflected as a nominee of the plaintiff in the records of the Board qua the house in question would also not in any manner come to his rescue much less entitle him to retain possession of the backside room (in covered courtyard) and sharing latrine/bathroom of Ground Floor of House No.3178, Sector-52, Chandigarh.

On being pointedly asked, learned counsel miserably failed

to refer to anything on record to show that the conclusions arrived at were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts below.

Accordingly, the appeal being devoid of any merit is dismissed.

21.07.2022

Vinay

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(MANJARI NEHRU KAUL)
JUDGE