

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(219)

RSA-244-2015 (O&M)

Date of Decision : May 19, 2023

Sanjay Nagrath and another

.. Appellants

Versus

Raj Kumar Nagrath

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajesh Bansal, Advocate, for the appellants.

Mr. Anurag Jain, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-2692-C-2021

As prayed for, the application is allowed.

Annexures R-1 to R-3 are taken on record.

CM-1745-C-2022

As prayed for, the application is allowed.

Annexures R-4 to R-6 are taken on record.

RSA-244-2015

1. Present Regular Second Appeal has been filed challenging the concurrent findings of the Courts below by which, the suit filed by the respondent-plaintiff seeking a mandatory injunction directing the appellants-defendants to vacate the first floor of House No.44, Sector 11,

Panchkula and to pay mesne profits @ Rs.10,000/- per month from the date of revocation of the licence of the appellants-defendants till the delivery of the possession along with interest, has been allowed.

2. The only argument which the learned counsel for the appellants has raised in the present appeal is that the house in question was not the exclusive property of respondent-plaintiff and the same belongs to the entire family including the appellants herein. On being asked to show the evidence which has come on record that the said property was not the exclusive property of the respondent-plaintiff but was a joint family property, learned counsel for the appellants has not been able to point out any evidence on record to prove the said fact.

3. Learned counsel for the appellants submits that though, the house in question was allotted in favour of the respondent-plaintiff in his name, but as he was not able to pay the installments of loan, the installments were contributed by the family members.

4. Learned counsel for the appellants further submits that in the cross-examination, the respondent-plaintiff had conceded that the installment of the property in question was more than the income/salary of the respondent-plaintiff, due to which it has to be inferred that the installments were being paid by respondent-plaintiff by collecting money from the others including appellants herein.

5. Keeping in view the submission of the learned counsel for the appellants it is clear that the property in question is being exclusively owned by the respondent-plaintiff. The same is being inferred to be a joint property by making an assertion that the payment qua the said property was made by everyone jointly including the appellants herein. On being asked

to support the said averment from the evidence, learned counsel for the appellants has not been able to point out any evidence which has come on record to show that at any given point of time, the appellants had contributed to the payment of installments of property in question, hence, in the absence of any such evidence on record, it cannot be said that the payment of installments of the property in question was made by anyone other than the respondent-plaintiff.

6. Further, it has already come on record that the respondent-plaintiff has taken a loan of Rs.60,000/- from the Bank to pay the installments of the property in question. The said evidence has not been controverted by the appellants, hence, even if it is assumed that the installment of the property in question was more than the income of the respondent-plaintiff, he has already supported his contention that the payment of the price of the property was made by the respondent-plaintiff after taking due loan from the Bank, hence, assertion of the appellants that they had contributed towards the price of the property, is not supported by any evidence on record and cannot be accepted.

7. The other argument which has been raised by the learned counsel for the appellants is that the mother of the parties, who had appeared as a witness, had given a statement that she had taken a loan from her son-in-law so as to make the payment in respect of the property in question. It may be noticed that though the statement to the said effect exist in the testimony of the mother but no corroborating evidence was brought on record to show that the same is correct. Even the son-in-law, who has supposedly given the loan, was never examined, hence, the assertion that someone other than the respondent-plaintiff had made the

payment of the property in question, as being alleged by the appellants, cannot be accepted.

8. No other argument was raised.

9. Keeping in view the fact that no perversity in the finding of the Court below has been pointed out, no interference is called for by this Court in the present appeal.

10. Dismissed.

CM-10214-C-2015 and CM-625-C-2015

As the main appeal has been dismissed, present applications also stand disposed of.

May 19, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No