

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

(106)

RSA No.1156 of 2018 (O&M)

Date of Decision: 04.09.2023

Nisha Sharma and another

.....Appellants

Versus

Kishan Chand Sharma and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. R.K. Chaudhary, Advocate for
Mr. Sukhdeep Parmar, Advocate
for the appellants.

VIKRAM AGGARWAL, J. (ORAL)**CM-2855-C-2018**

Prayer in the present application filed under Section 151 CPC is for condonation of delay of 05 days in filing the appeal.

Heard.

For the reasons, mentioned in the application, the same is allowed. Delay of 05 days in filing the appeal is condoned.

RSA No.1156 of 2018

1. This is Plaintiffs second appeal against concurrent findings recorded by both the Courts. For the sake of convenience, the parties shall be referred as per their original status.

2. The plaintiffs filed a suit for declaration to the effect that defendant No.1 had no right, title or interest in House No.387, Sector-21, Gurgaon (hereinafter referred to as the suit property) and that he only had the right to stay in the suit property alone on his short trips to India. A decree for permanent injunction restraining defendant No.1 from creating third party interests in the suit property and further restraining him from making any alterations in the suit property was sought. The plaintiff No.1 was the wife of defendant No.1. Plaintiffs No.2 to 5 were her brother and sister whereas defendant No.2

was the sister of defendant No.1 and defendant No.3 was his brother-in-law i.e., sister's husband.

3. The case set up by plaintiff No.1 was that since she wanted to purchase some land in India, her brother and sister selected the suit property. Defendant No.1 agreed to contribute with some finances on the condition that his name should also be included in sale deed. Sale deed 15.03.2004 was executed and the names of the plaintiffs and defendants No.1 were incorporated in the sale deed without specifying any shares. Construction was raised with the finances provided by the plaintiffs. *Greh Parvesh* was jointly celebrated on 01.08.2005 by the plaintiffs-defendant No.1. It had been agreed that defendant No.1 would only be using one room on the first floor on his visits to India. However, thereafter, defendant No.1 did not part with the keys of the first floor and changed the entire locks. Thereafter, defendants No.2 and 3 started residing in the suit property. Certain disputes arose regarding the suit property. Quarrels ensued. In November 2007, defendant No.1 started staying in the first floor portion of the suit property. Further quarrels ensued including quarrels between defendants no.1 and 2 with regard to division of properties. Apprehending that defendant No.1 may succumb to the pressure of defendant No.2 and may create 3rd party rights, the suit was filed.

4. The suit was opposed by the defendants. In the written statement preliminary objections with regard to cause of action, *locus standi*, maintainability, estoppel, concealment of facts etc., were raised. On merits, the factum of plaintiff No.1 and defendant No.1 having got divorced was admitted. A stand was taken that defendant No.1 had good relations with defendants No.2 and 3. It was also averred that the suit property had been purchased by defendant No.1 and out of love and affection, the names of plaintiffs had also been added. However, plaintiffs No.1 to 3 colluded with each other and were having an eye on the wealth of defendant No.1. All other averments were denied.

5. From the pleadings of the parties, the trial Court framed the following issues:-

- i. *Whether the plaintiffs are entitled for a decree for declaration as prayed for ? OPP.*
- ii. *Whether the plaintiffs are entitled to a decree for permanent injunction as prayed for ?OPP*
- iii. *Whether the suit of the plaintiffs is not maintainable in the present form?OPD*
- iv. *Whether the plaintiffs have no locus standi and cause of action to file the present suit?OPD*
- v. *Whether the plaintiffs have not come to the court with clean hands? OPD*
- vi. *Whether the plaintiffs are estopped from filing the present suit by their own acts, conduct, admissions and commissions, if so its effect?OPD*
- vii. *Whether the suit of the plaintiffs have not been properly valued for court fee and jurisdiction?OPD*
- viii. *Relief.”*

6. Parties led their respective evidence. The trial Court dismissed the suit filed by the plaintiffs and the appeal was also dismissed by the First Appellate Court, leading to the filing of the present appeal.

7. I have heard learned counsel for the appellants-plaintiffs and have perused the paper book.

8. Before advertng to the merits of the appeal, it would be essential to observe that the requirement of framing of a substantial question of law in second appeal in terms of the provisions of Section 100 of the Code of Civil Procedure and as had been laid down in various pronouncements by the Hon’ble Apex Court including **Hero Vinoth (minor) versus Seshammal 2006 (5) SCC 545**, was subsequently held to be not there by the Hon’ble Apex Court. It was held that in the States of Punjab and Haryana, it is the

Section 100 CPC would not hold the field and, accordingly, there would be no requirement of framing substantial question of law in second appeal. With regard to the States of Punjab and Haryana, it was so held in Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. 2019 (3) R.C.R. (Civil) and Satyender and Ors. Versus Saroj and Ors. 2022 (12) Scale 92 respectively.

9. Learned counsel for the appellants-plaintiffs has submitted that both the Courts below erred in non-suiting the appellants-plaintiffs. It has been contended that both the Courts below did not consider that defendant no.1 had not led any evidence to prove that he had contributed towards the purchase of the suit property or even with regard to the construction of the house. It has been submitted that the appellants-plaintiffs had led cogent evidence to prove that the defendants had no right in the suit property but the same was lightly disbelieved by the Courts below. Learned counsel has contended that even the account statements of the plaintiffs had been produced on record to show that two drafts of Rs.4,02,000/- and Rs.4,00,000/- had been made by plaintiff No.3 and that a payment of Rs.4,19,000/- had been made by Praveen Kapoor. Even the account statements of Pawan Kapoor were produced on record which showed that a sum of Rs.1,40,000/- had been withdrawn from his account.

10. I have considered the submissions made by learned counsel for the appellants-plaintiffs.

11. Admittedly plaintiff No.1 was married to defendant No.1. Out of the wedlock, a child was also born. It is also admitted that at the time of filing of the suit, the marriage had been dissolved. The suit property was purchased vide sale deed dated 15.03.2004 (Ex.PW6/1). In the sale deed, the plaintiffs Nisha Sharma, Praveen Kapoor, Pawan Kapoor and defendant No.1-Kisan Chand were reflected as owners. No specific share was mentioned meaning thereby that they were owners in equal shares. Under the circumstances, it was incumbent upon the plaintiffs to prove that the name of defendant

No.1 had figured in the sale deed only on account of love and affection and that in fact

he had not made any contribution towards the same. This was, however, not proved. The registered sale deed would therefore, have to be taken on the face of it and defendant No.1 was an owner as per the same.

12. Merely because some demand drafts had been made by Monica Kapoor would not mean that the same had been contributed towards the sale consideration of the suit property. The payment of Rs.4,19,000/- from the account of Praveen Kapoor would also not reflect the same. The withdrawal of Rs.1,40,000/- from the account of Pawan Kapoor would also not mean that the same had been withdrawn for payment *qua* the disputed property. In fact, to the contrary, from the joint account of plaintiff No.1 and defendant No.1, 8,000/- dollars were transferred to the account of Monica Kapoor and further on another occasion 6500/- dollars were transferred. Monica Kapoor did not step into the witness-box to explain any of the amounts. Under the circumstances, it cannot be said that the amount was paid by Monica Kapoor or had been received by her on what account. It appears that the suit was filed once the relations of the parties got strained. Both the Courts recorded concurrent findings of facts, which, the appellants-plaintiffs have not been able to show, were perverse. I, therefore, do not find any reason to interfere in the concurrent findings of facts recorded by both the Courts below

In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed.

September 4th, 2023
Rekha

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.