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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-25-2023 (O&M)
Date of decision: 06.01.2023

Sundeeep Singh Bath	V/S	...Appellant
Rajinder Kaur		...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Harsh Aggarwal, Advocate,
Forthe appellant.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the plaintiff is in second appeal before this Court assailing the trial Court judgment and decree dated 11.09.2017, as upheld by learned First Appellate Court vide its judgment and decree dated 06.09.2022.

3. Briefly stated, facts as noticed by Courts below. Defendant is mother of plaintiff. Plaintiff states that she got divorced from his father late Sh. Harbhajan Singh on 13.03.1992. In this regard, defendant gave an affidavit to father of plaintiff and after getting the divorce, defendant went abroad. At present, she is residing at House No.38, Cheshire Road, Smethwick B67 6 DL (UK). Father of plaintiff late Sh. Harbhajan Singh purchased a house i.e., H.No.3258/1, Sector 44-D, Chandigarh from Sh. Bal Krishan on 09.05.1985 through General Power of Attorney. At the time of purchasing the said house, plaintiff was minor aged about 3 years and was residing with his father until he expired in the year-2007. Plaintiff has been residing in the above said house since the year-1985. He has got the proof of Identity as Passport and Voter Identity Card on the same address. In the

year-2002, plaintiff went abroad for his further studies and came back in the year-2007. He got married in the above said house in the year-2009 and had been residing there till 2011. In the year-2011, plaintiff left for Delhi and the said House was then rented out by him. In the month of September-2012, plaintiff got the house vacated from the tenants and put a lock there. He also paid electricity and water bills to the concerned departments. On 06.10.2013, plaintiff came to know that defendant had come to India and wanted to take the possession of above said house forcibly. Plaintiff requested defendant not to interfere into his peaceful possession/occupation, but in vain. When plaintiff told defendant that he will lodge a complaint with police, she then left the premises. But she threatened that she will come again with some anti-social elements and will take the possession of the house forcibly. Hence, the civil suit.

4. Upon notice, defendant appeared and filed written statement while taking preliminary objections that present suit is not maintainable; plaintiff has not come to the Court with clean hands; and plaintiff does not have any right, title or interest in the property in dispute. On merits, it was stated therein that defendant did not get divorce from late Harbhajan Singh, father of plaintiff and merely by executing an affidavit as alleged, no divorce can take place. Further, it was submitted that she went abroad and continued to be the wife of late Harbhajan Singh throughout. House No.3258/1, Sector 44, Chandigarh was purchased by her along with her husband late Sh. Harbhajan Singh jointly from their joint funds by way of indirect sale as the Housing Board properties could not be sold through registered sale deed. Part of the documents of sale were executed in favour of late Sh. Harbhajan Singh and other documents were executed in favour of defendant. Defendant is thus co-owner of the premises in question. She went abroad after locking the house but the plaintiff entered therein after breaking open locks illegally and forcibly. His possession over the house is illegal and at the most is

that of licensee. Documents mentioned in para 5 of the plaint were stated to have been prepared by plaintiff to get relief from the Court. Rest of the averments of plaint were denied.

5. Based on the rival pleadings, following issues were framed:

1. Whether plaintiff is entitled to the relief of permanent injunction as prayed? OPP

2. Whether present suit is not maintainable? OPD

3. Relief.”

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issues No.1 and 2 were decided against the plaintiff and in favour of the defendant. Consequently, suit of plaintiff was dismissed with costs by the trial Court.

8. First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal before this Court.

9. Shorn of details, the appellant's contentions herein are that no issue was framed regarding divorce of the respondent/defendant or ownership of the house; that there is no proof of the defendant's possession over the house; that there would be presumption of the continued possession in favour of the plaintiff; that there is nothing on record to show that the house was purchased with the joint funds of Harbhajan Singh (deceased) and the defendant; that the suit was for injunction based on possession but the courts below decided the matter as if it was a suit for declaration of on title; that the courts below lost sight of the fact that the defendant had admitted the plaintiff was in possession of the house.

10. Having heard the learned counsel for the appellant and perused the record, I am of the opinion that there is no merit in this Second Appeal.

11. Relevant part of First Appellate Court judgment, for ready reference, is as below:

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“9. In view of the above discussion and after careful perusal of the case file, this Court is of the considered opinion that there is no legal or factual law in the judgment dated 11.09.2017 passed by the learned trial Court. Even in the opinion of this Court, the appellant/plaintiff is not entitled for the relief of permanent injunction against the respondent/defendant. Even if the possession of the appellant/plaintiff over the suit property is admitted by the respondent/defendant then also she being the mother of the appellant/plaintiff and the wife of the father of appellant/plaintiff, who was the original owner of the suit property, has become the co-owner in the same. It is also admitted that the original owner of the suit property i.e., late Harbhajan Singh has died in the year 2007. Moreover, it is the stand of the respondent/defendant that she had jointly purchased this suit property with late Sh. Harbhajan Singh out of their joint funds.

10. The appellant/plaintiff has tried to set up a claim that there were strained relations between his father and the respondent/defendant and the respondent/defendant had obtained divorce from his father. In this respect, he has set up the claim that by way of affidavit Mark PX/1/Ex.P1 dated 13.03.1992, the respondent/defendant had divorced from his father. Even during the arguments in this Court, the learned counsel for the appellant/plaintiff could not show any law as per which, such type of divorce by way of affidavit could be obtained.

11. Admittedly, even in the name of the original owner Sh.Harbhajan Singh, there is no document of title of the suit property. The alleged ownership in his favour was on the basis of the General Power of attorney and the Will etc. This Court is also of the same view that the ownership of the suit property cannot be transferred in favour of any person on the basis of General Power of Attorney. However, even if, it is taken that the ownership is admitted by the respondent/defendant in favour of her late husband then she cannot deny the same then also her other version that she is also co-owner of the same, cannot be brushed aside.

12. It has been argued by the learned counsel for the appellant/plaintiff that he has not sought any declaration about the ownership of the appellant/plaintiff qua the suit property and no declaration has been sought in this case. However, this Court is of the considered opinion that by now it is very settled law that the permanent injunction relief includes the relief of declaration also. The ruling as relied upon by the Id. counsel for the appellant/plaintiff Rame Gowda (D) by LR's (supra) has no applicability on the facts and circumstances of the present

case. In the present case, the respondent/defendant is not trespasser rather, she is the co-owner of the suit property and it was not disputed by the learned counsel for the appellant/plaintiff that no injunction can be granted against a co-owner of the property. Here, it is pertinent to mention that the learned counsel for the appellant/plaintiff initially stated that he will show the ruling that a co-owner can also be enjoined but ultimately stated that he does not want to show any such authority.

13. *No other point was argued.*

14. *Hence, with the above observations and discussion, this Court is of the considered opinion that the learned trial Court has not grossly and manifestly erred while recording the findings under the relevant issues. The submissions made by the learned counsel for the appellant-plaintiff have been considered but have been found to be untenable and without any force on merits. Hence, the findings recorded by the learned trial Court under the relevant issues stand re-affirmed. While concurring with the arguments advanced by the learned counsel for the respondent/defendant, the appeal as such is being devoid of merits and deserves for its dismissal and accordingly stands dismissed with costs.”*

12. That apart, the parties knew their rival pleadings about so called divorce of the defendant from late Harbhajan Singh through an affidavit, which was the sole basis for the plaintiff's claim. He had actually produced that affidavit. It is not shown what prejudice, if any, was caused to the plaintiff due to non-framing of a specific issue in this behalf. The learned courts rightly held that there could not be a valid divorce merely through such like affidavit. When Harbhajan Singh died, in the natural course of succession, the defendant had inherited a share in the house. In the eye of law, the possession of one co-sharer is for and on behalf of all co-sharers. The plaintiff could not, therefore, claim that he was in exclusive possession of the suit property and on that basis be granted an injunction against the defendant co-sharer restraining the latter from interfering with his possession over the suit property.

13. To my mind, judgments under challenge have been rendered after due and correct appreciation of record of the case and evidence adduced by the respective parties.

14. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

15. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

16. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

17. In the parting, I may hasten to add that in any case, the suit preferred by the appellant was merely for an injunction without seeking any declaration *qua* his substantive rights and dismissal of the suit does not, in any manner, preclude him to seek declaration and in case found entitled to any rights *qua* the suit property, needless to say the consequential relief can also be sought.

18. Pending application/s, if any, shall also stand disposed of.

19. No order as to costs.

(ARUN MONGA)
JUDGE

January 06, 2023

Vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No