

**SANJAY SHARMA
VS
KARANJEET AND ANOTHER**

Present: Mr. Rajesh Sethi, Advocate
Mr. Arun Biriwal, Advocate
Ms. Preeti Bansal, Advocate
Mr. Paramdeep Singh, Advocate
and Ms. Indu Bala, Advocate
for the review applicant/appellant.

1. Through this application, the appellant seeks review of order passed on 23.05.2024. By the aforesaid order, the appeal filed by the appellant was dismissed.

2. The learned counsel representing the review applicant has been heard at length.

3. The learned counsel representing the review application has made the following submissions:-

i. That the appellant's parents resided with him in this family house of 3 marlas. He has raised constructions in this house and therefore, he has sentiments attached with the property.

ii. Notwithstanding the merit, he made a request that he is ready to pay 5/6th of the market value of the property.

iii. That respondent No.1 is admittedly a stranger and an injunction suit against him by a person in exclusive possession was maintainable and should have been decreed.

iv. That respondent No.2 is in alienee of the undivided portion and the only remedy for her was to file a suit for partition and separate possession.

v. The prima facie case and balance of convenience against a forcible ouster is in appellant's favour.

4. This Court has considered the submissions of the learned counsel representing the review application.

5. The submission No.(ii) and (v) of the learned counsel representing the review application has already been examined and need no further deliberation.

6. With respect to submission No.(i), (iii) and (iv), it may be noted that originally, the suit property belongs to Sh. Rameshwar Dutt Sharma. He had three sons including the appellant and three daughters. Respondent No.2 is grand-daughter of Sh. Rameshwar Dutt Sharma. In other words, Sh. Rameshwar Dutt Sharma is maternal grand-father of respondent No.2. Respondent No.1 is her husband. Hence, they are not strangers.

7. Admittedly, the plaintiff is owner to the extent of 1/6th share, whereas, remaining heirs have transferred the property in favour of respondent No.2, who is not a stranger. By filing the present suit, the plaintiff who is in physical possession of the property wants to force the defendant to sell their share. At the time of hearing of the appeal, the learned counsel representing the appellant was asked to hand over vacant possession of the property to enable the parties to sell the same and apportion the sale proceeds according to their respective shares, however, he refused.

8. The learned counsel representing the review application also relies upon the judgment passed by the Supreme Court in **Dorab Cawasji Warden Vs. Coomi Sorab Warden, 1990 (2) SCC 117.**

9. This Court has carefully read the judgment.

10. In the above mentioned case, a portion of the property was sold to the stranger. In that context, the Supreme Court while deciding the appeal arising from an order of interim injunction, decided the case. The facts of the present case are different.

11. Hence, with highest respect, the judgment shall not be applicable.

12. Dismissed accordingly.

July 08, 2024

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(ANIL KSHETARPAL)
JUDGE