

IN THE COURT OF PARMOD KUMAR, HCS
CIVIL JUDGE (JUNIOR DIVISION), CHANDIGARH
(UID No. HR0478)

Civil Suit No. 524/2019
CNR: CHCH02-001016-2019
Date of Registration: 15.03.2019
Date of Judgment: 25.01.2024

Sanjeev Kumar aged 41 years son of Late Sh. Radha krishan, resident of House No.71, Ground Floor, Sector-15-A, Chandigarh.

.....Plaintiff

VERSUS

1. Sanjay Kumar son of Late Sh. Radha Krishan
2. Simmi wife of Sanjay Kumar

Both resident of House No.71, First Floor, Sector-15-A, Chandigarh.

.... Defendants

Civil Suit under Section 38 of the Specific Relief Act for Perpetual Prohibitory Injunction restraining the defendants from interfering in the day to day life, lawful and peaceful possession of the plaintiff in the ground and second floor of House No.71, Sector-15-A, Chandigarh and further restraining the defendants from interrupting the occupier of the plaintiff in the second floor of the above said house.

Present :- Sh. Dinesh Goel, counsel for the plaintiff
Sh. Mohit Jaggi counsel for the defendants No.1 & 2

J U D G M E N T:

The present suit has been filed by the plaintiff seeking Perpetual Prohibitory Injunction as detailed in the head note of the plaint.

FACTS :

PLAINT:

2. Brief facts of the present case are that the mother of the plaintiff and defendant No.1 has purchased House No.71 sector 15-A Chandigarh vide registered sale deed dated 05.06.1989. The plaintiff and defendant No. 1 are the real brothers and defendant No. 2 is the wife of defendant No.1.

During the life span of the Smt. Sheela Rani i.e. mother of plaintiff and defendant No. 1 who expired on 25.04.2010 has executed Will dated 21.12.2006 and according to the Will ground floor was acquired by Sh. Radha Krishan i.e. the father of the plaintiff and defendant No. 1, first floor was acquired by defendant No. 1 and second floor was acquired by plaintiff. It is submitted that father of the plaintiff and defendant No. 1 namely Radha Krishan who died on 13.03.2011 has executed Will dated 17.12.2010 during his life span wherein he transferred his share i.e. Ground floor of above said house in the name of his younger son i.e plaintiff which he has acquired from his wife according to the will dated 21.12.2006. According to the Wills plaintiff has acquired ground floor from his father and second floor from her mother. It is pertinent to mention here that defendant No.1 has filed a suit for declaration vide Plaint Annexure P-4 against the plaintiff to restrained the plaintiff to alienate any part of the house in question and also further prayed in the said plaint that the rent of the second floor may be given to the defendant No.1. and after filling of the said suit plaintiff appeared and filed written statement. Issues has been framed by that court vide orders Annexure P-18 and after framing of the issues and evidence defendant No.1 withdrew the said suit. It is further pertinent to mention here that plaintiff has disclosed about the above said both the Wills in the written statement which is already annexed as P-5. However defendant No.1 have also knowledge of the said Wills prior to filling of the said suit. It is further submitted that both the above said Wills have not been challenged by the defendant No.1 till today and also on account of withdrawal of the above mentioned suit, it became clear that the wills have gone unchallenged and according to the

same the plaintiff became the sole and absolute owner of ground and second floor in the above said house. Hence having knowledge about the both the Wills from the last several years and not challenging them till today and also on withdrawal of the said suit both the Wills stands proved and presumed to be genuine testamentary of the both the Wills testator. Since long the defendants are creating hurdles in the life of plaintiff with mala-fide intentions to usurp the share of the plaintiff in the second floor by pressurize the plaintiff and his family by threatening them to falsely implication in false cases to get possession of second floor by hook or crook. Moreover defendants are harassing the occupier of the plaintiff who occupied some portion on the second floor so that they vacate the premises. It is further submitted that from the last two months the attitude and behavior of the defendants have become more inimical and belligerent. They are continuously and openly threatening to interfering in the lawful and peaceful possession of the plaintiff and to dispossess the occupier of the plaintiff by creating disturbances. The defendants have no right to create hindrances in the running day to day life of the plaintiff. The plaintiff has lost his peace of mind and living under the constant threats of the defendants and in case defendants got successful in their nefarious intentions of taking forcible possession of the second floor of the house in question and creating hindrances to the occupier of the plaintiff, the plaintiff shall suffer an irreparable loss and injury which can not be compensated in terms of money. Hence, the present suit

It is also relevant to mention here that plaintiff has filed suit for partition and possession vide plaint Annexure P-9 which is pending in the

Hon'ble court of Sh. Gurkiran Singh, Civil Judge (Junior Division) and next date of hearing is 08.04.2019 to get the decree of partition if same not permissible then auction among the co owners and further if same is also not possible the auction of the house in question to the public. It is further relevant to mention here that it is admitted fact that possession of ground and second floor is occupied by the plaintiff.

WRITTEN STATEMENT :-

3. Written Statement on behalf of defendants filed wherein preliminary objections were taken on the ground of non-maintainability; no cause of action; not come to the court with clean hands; undue harassment to the defendants etc. were raised.

On merit, it is admitted that the plaintiff and defendant No.1 are real brothers. It is specifically denied that the name of father of the parties is Radha Krishan. The name of father of the parties is Radha Kishan. It is further denied that deceased Radha Kishan executed any Will dated 17.12.2010. The said document is a forged and fabricated document. It is further submitted that no partition of the property has taken place between the parties. According to the present situation, answering defendant No.1 is entitled to 55% of the suit property. In other words, answering defendant No.1 is owner to the extent of 55% in the suit property. It is respectfully submitted that the previous suit was only an injunction suit and therefore, the plaintiff cannot take any benefit from the said case. It is again denied that father of the parties had executed the alleged Will. It is further denied that plaintiff has acquired ground floor from the father. It is respectfully submitted that defendant No.1 is not required to challenge any such forged

and fabricated document. Rather, heavy burden lies upon the plaintiff to prove its existence. The burden is upon the plaintiff to prove the alleged Will. The answering defendant has denied its existence from the very beginning. The defendants are not creating any kind of hurdles in the life of the plaintiff. Rather the plaintiff himself is creating hurdles in the life of the defendants. The suit property has not been partitioned by metes and bounds till date. Therefore, there is no question of exclusive possession of any party. It is denied that the defendant are harassing any one. It is denied that there is any threat from the side of the defendants. Defendant No.1 is owner to the extent of 55% in the suit property. The plaintiff wants to illegally grab the share of defendant No.1. Therefore, he is filing false cases against defendant No.1 and his wife, just to put pressure on them to toe to the lines of the plaintiff. There is no exclusive right of the plaintiff in the second floor of the house in question because the property has not been partitioned by metes and bounds. Defendant No.1 is owner to the extent of 55% in the suit property. It is further denied that the defendants are creating any hindrance. It is further denied that the plaintiff would suffer any loss or injury. It is further submitted that the said suit is false and without any basis. However, it is not denied that no partition has taken place between the parties. It is denied that the possession of ground and second floor is with the plaintiff. The plaintiff cannot claim exclusive possession of any portion of the suit property, till the partition of the property takes place by metes and bounds. Rest of the averments are denied and prayer for dismissal of suit has been made.

ISSUES :

4. Replication not filed. From the pleadings of both the parties, following issues were framed on 18.11.2019 :-

1. Whether the plaintiff is entitled to the relief of prohibitory injunction as prayed for ? OPP
2. Whether the present suit is not maintainable ? OPD
3. Whether the plaintiff has not come to the court with clean hands and suppressed material facts ? OPD
4. Whether the plaintiff is not having cause of action and locus standi to file the present suit ? OPD
5. Relief

EVIDENCE OF PARTIES :-

PLAINTIFF EVIDENCE :

5. Thereafter, the case was fixed for evidence of the plaintiff. Plaintiff in order to prove his case got examined himself as PW1 and tendered into evidence his duly sworn affidavit Ex. PW1/A reiterated the averments mentioned in the plaint which are not reproduced here for the sake of brevity. Besides this, he tendered documents Ex.P1 to Ex.P9 in his examination-in-chief.

Besides oral evidence, plaintiff placed on record following documents:-

Documents	Exhibit
Copy of sale deed	Ex. P1
Copy of death certificate of Radha Krishan	Ex. P2
Copy of Will dated 21.12.2006	Ex. P3
Copy of death certificate of Bishan Devi	Ex. P4
Copy of Will dated 17.12.2010	Ex. P5
Copy of suit for declaration titled Sanjay Kumar Vs. Sanjeev Kumar	Ex. P6
Copy of written statement filed in civil suit	Ex. P7
Copy of order dated 22.01.2013	Ex. P8

Copy of suit for partition and permanent injunction titled Sanjeev Kumar Vs. Sanjay Kumar	Ex. P9
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6. Evidence of plaintiff was closed by learned counsel for the plaintiff on 13.10.2023 vide his separate statement recorded to this effect.

DEFENDANT EVIDENCE :

7. In order to rebut the case of the plaintiff, defendant examined defendant himself appeared in the witness box as DW-1 who tendered into evidence his duly sworn affidavit Ex.DW1/A reiterated the averments mentioned in the written statement which are not reproduced here for the sake of brevity.

Thereafter, defendant has tendered into evidence attested copies of his medical cards as Ex. DX copy of medical cards and closed the evidence.

REBUTTAL EVIDENCE :-

8. However, Plaintiff opted to lead evidence in rebuttal but no evidence was led by plaintiff in rebuttal. Therefore, same was closed by court order.

ARGUMENTS :

9. I have heard both the sides. I have also gone through the case file and every document available on the record, with the able assistance of both the counsels. The findings of this Court with reasons thereof are as under:-

Issue No.1 :-

1. *Whether the plaintiff is entitled to the relief of prohibitory injunction as prayed for ? OPP*

10. Burden to prove the issue was on the plaintiff. Plaintiff has to prove his case on the requisite scale of preponderance of probabilities by way of leading cogent evidence. The plaintiff must have to stand on his own legs, and he cannot take the advantage of weaknesses of the defendants.

11. Initiating arguments, learned counsel for the plaintiff has argued that the mother of plaintiff and defendant No.1 purchased the house on the basis of sale deed; she expired on 25.04.2010; during her life time she executed a Will dated 21.12.2006 vide which Radha Krishan acquired the property rights in the house in question of ground floor; Radha Krishan father of plaintiff and defendant No.1 died on 13.03.2011; during his life time he executed a Will dated 17.12.2010 and bequeathed the right to use the ground floor which was earlier bequeathed in favour of Radha Krishan from his wife. He has further argued that defendant No.1 is in possession of house portion of first floor and plaintiff is in possession of second floor of the house. He has further argued that plaintiff has acquired his share on ground floor from his father and on the basis of Will dated 17.12.2010 and plaintiff acquired the first floor from his mother on the basis of Will dated 21.12.2006. He has further argued that defendant has not challenged any Will till today, therefore plaintiff has become absolute owner of the suit property and now defendants are trying to dispossess the plaintiff. Therefore, suit may kindly be decreed in the interest of justice.

12. Refuting arguments, learned counsel for the defendants has argued that Radha Krishan was not father of plaintiff and defendant No.1. The Will allegedly executed by deceased Radha Krishan on dated 17.12.2010 is in dispute. He has further argued that defendant is owner in

possession of the house to the extent of 55% share of the house. He has further argued that no share in the house was ever acquired by the plaintiff. He has further argued that parties to the suit are not in exclusive possession of over any specific portion of the house. He has further argued that portion by meats and bounds has not yet been effected between the parties. Therefore, the suit of plaintiff may kindly be dismissed being devoid of any merits.

13. After having heard learned counsel for the parties and perusal of the case file, this court has observed that the present suit has been filed by plaintiff under Section 38 of the Specific Relief Act for Perpetual Prohibitory Injunction restraining the defendants from interfering in the day to day life, lawful and peaceful possession of the plaintiff in the ground and second floor of House No.71, Sector-15-A, Chandigarh and further restraining the defendants from interrupting the occupier of the plaintiff in the second floor of the above said house.

14. Relationship between the parties are admitted. Admittedly, defendant is in possession of first floor and plaintiff is in possession of second floor. It is also admitted that the mother of plaintiff has purchased the suit property vide sale deed dated 05.06.1989 and she executed a Will dated 21.12.2006 and bequeathed the ground floor of suit property to Radha Krishan, father of plaintiff and defendant No.1; first floor to defendant No.1 and second floor to plaintiff. The plaintiff has set up his claim of possession on ground floor on the basis of Will executed by his father and is in possession of second floor on the basis of Will executed by his mother. The Will of father is in favour of plaintiff is denied by defendants. In this

situation, it cannot be presumed that plaintiff is in possession of ground floor. The suit property is still unpartitioned by metes and bounds. The efficacious remedy between the party is suit for partition which is pending between the parties.

15. Thus, the position emerges out that the plaintiff is claiming the injunction against the co sharers in the suit property which has not yet been partitioned. Thus, the question involved in the present case at this stage is that whether an injunction can be granted to a co-sharer against the other co-sharer in the suit property in the condition when the plaintiff is not in exclusive possession of the suit property? The legal position regarding injunction in favour of co sharer has been discussed below:

16. The question was discussed by double bench of our own Hon'ble High Court in case **Sant Ram v. Daya Ram, (Punjab)(DB) 1962(1) ILR (Punjab) 101 : 1961 AIR (Punjab) 528** in which it was held the basic rules laying down the rights and obligations of the concurrent owners inter se are the following :-

(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of the joint property by one co-owner is, in the eye of law, possession of all even if all but one are actually out of possession.

(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on

behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other, as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband-like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition

(8) The remedy of a co-owner not in possession, or not in possession of share of the joint property, is by way of a suit for partition or for actual joint possession, but not for ejectment. Same is the case where co-owner sets up an exclusive, title in himself.

(9) Where a portion of the joint property is, by common consent of the co-owners, reserves for a particular common purpose, it cannot be diverted to an inconsistent user by a co-owner; if he does so, he is liable to be ejected and the particular parcel will be liable to be restored to its original condition. It is not necessary in such a case to show that special damage has been suffered.

17. The principle relating to rights and liabilities of the co sharers were discussed by Hon'ble Supreme Court in '**Jai Singh vs. Gurmej Singh, 2009(1) SLJ, SC 714**' in which it was held that where a co owner is in

possession of separate parcels under an arrangement consented by the other co owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition.

18. The plaintiff has failed to show his exclusive possession in the house. The plaintiff has also failed to show any real apprehension or threat to use the suit property as defendant is not residing in the suit property, therefore there is no cause of action arose in favour of plaintiff seeking injunction.

19. In view of above mentioned settled legal position, it is clear that efficacious remedy to a co-owner except one who is in exclusive possession of suit property is to file a suit for partition and not for permanent injunction. In other words, the injunction can be sought against a co sharer only by a co-sharer who is in exclusive possession of the suit property. Even if the plaintiff is in possession of the suit property his possession would be treated as joint possession along with other co-sharers. Hence the plaintiff is not entitled for relief of injunction. If the plaintiff and defendants are in possession of different portions of joint property and the plaintiff is aggrieved from the existing allocation of possession to him, the appropriate remedy for him is to file a suit for partition and not a suit for permanent injunction.

20. It is, therefore, concluded that the prima facie case, balance of convenience are not in favour of the plaintiff and the plaintiffs are not going to suffer any irreparable loss and injury if the injunction is not granted in his favour. With such observations, issue No.1 is decided against plaintiff and in favour of defendants.

Issues No. 2 to 4 :-

2. Whether the present suit is not maintainable ? OPD
3. Whether the plaintiff has not come to the court with clean hands and suppressed material facts ? OPD
4. Whether the plaintiff is not having cause of action and locus standi to file the present suit ? OPD

21. Onus to prove these issues were upon the defendants. However, no evidence has been led by defendants on these issues. During the course of arguments defendants have not pressed these issues. Accordingly, these issues are disposed of being not pressed.

RELIEF :-

22. As a sequel to my aforesaid findings, the suit of plaintiff dismissed with cost. Decree sheet be prepared accordingly. File be consigned to records after doing needful compliance.

Pronounced in open court:
25.01.2024

(Parmod Kumar)
Civil Judge (Junior Division),
Chandigarh/ UID No.HR-0478

All the pages of this judgment have been checked and signed by me.

(Parmod Kumar)
Civil Judge (Junior Division),
Chandigarh/ UID No.HR-0478