

IN THE COURT OF SH. ANKIT AIRI, PCS
CIVIL JUDGE (JR. DIVN.)
CHANDIGARH

CS/1785/2022

CNR No: CHCH02-003285-2022

Date of Institution :- 06.10.2022

Date of decision :- 26.11.2024

CIVIL SUIT

Naresh Sharma, s/o, Late Tara Chand, r/o, 1121, Sector 29-B,
Chandigarh.

....Plaintiff

Versus.

General Public.

....Defendant

(Suit for Declaration)

Present: Sh. Vikas Gupta, Advocate for the plaintiff.

Defendant *ex-parte*.

JUDGMENT

1. Tersely, the case of the plaintiff and his wife namely Sunita Sharma (since deceased) had purchased a house No. 1443/6, Sector 29-B, Chandigarh from its owner namely Mehnga Ram in lieu of the House No. 1121, Sector 29-B, Chandigarh, which was owned by the wife of the plaintiff. Accordingly, an agreement dated 23.03.1994 was executed between the deceased wife of the plaintiff and the said Mehnga Ram, who had also executed some other documents, i.e., General Power of Attorney of 16.05.1994, Affidavit of 18.05.1994 and a Will, in favor of the wife of the plaintiff namely Sunita Sharma. Aside from that, the said Mehnga Ram had also executed a Registered Special Power of Attorney dated 18.05.1994 in favor of plaintiff. It was then asserted that as per the agreement dated 23.03.1994, the said Mehnga Ram had received a sum of Rs. 2,40,000/- from the plaintiff and his wife and had delivered the possession of the said house on 18.05.1994. It was further his case that the said Mehnga Ram was unmarried and that he was not having any close relative. He was also allegedly residing alone by the year 1996, when the plaintiff and his wife had tried to contact him *qua* the transfer of the above-mentioned property. The plaintiff then submitted in the plaint that he had tried to trace out said Mehnga Ram at the possible places but to no avail. Plaintiff had also come to know that the said Mehnga Ram was not having any relative in Chandigarh, or, around and that nobody had watched anybody in the society to visit him frequently or occasionally. It is pertinent to mention over here that the said Mehnga

Ram had also allegedly sold the house which he had got exchanged from the plaintiff and his wife. As per his case, the wife of the plaintiff had also filed for the probate before the Court which was dismissed for want of a death certificate. It was so asserted to be ordered by the Court of Sh. Jasbir Singh Sidhu, the then Learned Additional Civil Judge (Senior Division), Chandigarh. On 09.12.2020, the wife of the plaintiff namely Sunita Sharma had also expired and the plaintiff being class-I legal heir of hers, was filing the present suit. It was further asserted that the said said Mehnga Ram was about 70 years old at the time of execution of the above said exchange agreement and that in the year 1996, he had finally disappeared. His whereabouts were also not known to the plaintiff as well as to any other person, including the neighbors thereof, who were living in the adjacent houses in the same locality where the said Mehnga Ram was residing. He was asserted not to be heard of since 1996 from those who would naturally have heard of him, had he been alive. Finally, it was stated forth that, as required by the Chandigarh Housing Board, the plaintiff had applied to the District Judge, Chandigarh for grant of Probate of the Will so executed by deceased Mehnga Ram. It was entrusted to the Court of Additional Civil Judge (Senior Division) Chandigarh and the same was finally ordered to be dismissed for the want of the death certificate of said Mehnga Ram. Hence, this suit to declare the said Mehnga Ram as 'civilly dead', for the plaintiff has to obtain the transfer of the said house in his own name.

2. Upon notice, since the only defendant, i.e., General Public

had failed to appear in the Court despite its due service, the same was consequently proceeded against *ex-parte*.

3. Thereafter, the case was fixed for *ex-parte* evidence of the plaintiff. In support of his case, the plaintiff himself stepped into witness box as **PW1**. As the same, vide his duly sworn affidavit Ex.PW1/A, had only sought to reiterate the entire version of his own case, as set out in the plaint, the same, to my mind, need not be reiterated. To the same effect were the testimonies of **PW2** Manjit Singh and **PW3** Sukhminder Singh, who, in turn vide their sworn affidavits Ex.PW2/A & Ex.PW3/A respectively, had deposed to the effect that they were known to the said said Mehnga Ram and that they have not seen him since 1996.

3-A. The plaintiff then examined one Anil Sharma as **PW4**, who, in turn had identified his signatures upon Ex.P5, i.e., Special Power Attorney so executed by Mehanga Ram in favor of plaintiff.

3-B. **PW5** Ashok Kumar, Clerk, o/o, Sub-Registrar, U.T., Chandigarh had then turned up and had deposed that the Special Power of Attorney so executed by Mehanga Ram in favor plaintiff is registered in their office at Sr. No. 1502, Book No. 4, Volume No. 154, Page No. 126 on 19.05.1994. He had then authenticated Ex.P5 to be the true copy thereof.

3-C. **PW6** Yogesh, Junior Assistant, Chandigarh Housing Board, Chandigarh had simply brought the summoned record in original pertaining to House No. 1121, Sector 29-B, Chandigarh, which was reportedly allotted to Mehnga Ram, c/o, Evergreen Sweets, Booth No. I,

Sector 8-B, Chandigarh, vide allotment letter No. 8239 dated 01.11.1978. He had then authenticated the copy of allotment letter already exhibited as Ex.P6 in the Court file. He also deposed to the effect that there was an application filed by said Mehnga Ram for the allotment of dwelling unit along with another application for preference in allotment at ground floor and copies thereof were Ex.PW6/1 and Ex.PW6/2. As per his record, Ms. Sunita Sharma had also once applied for transfer of the said house vide application dated 23.09.2004.

3-D. Finally, in documentary evidence, plaintiff placed on record the copy of the 'Aadhar card' of PW2 Manjit Singh as Ex.PW2/1, copy of the electricity bill as Ex.PW2/2, copy of 'Aadhar' card of Sukhminder Singh PW3 as Ex.PW3/1, copy of the application for allotment & application for preference in allotment as Ex.PW6/1 & Ex.PW6/2, copy of the 'Aadhar' card of plaintiff as Ex.P1, copy of the agreement as Ex.P2, copy of general power of attorney as Ex.P3, copy of affidavit of Mehanga Ram as Ex.P4, copy of special power of attorney as Ex.P5, copy of allotment letter as Ex.P6 and copy of the death certificate of Sunita Sharma as Ex.P7.

4. The matter was then listed for arguments and as for the arguments, since the learned counsel for the plaintiff had only sought to argue in the same lines as that of his detailed pleadings on record, in my humble opinion, it shall serve no purpose at all for this Court, or, for any one else for that matter, if this Court were to needlessly constrain itself to reiterate the substance of the pleadings, in shape of arguments.

Nevertheless, for the sake of the reference the substance of the pleadings of the plaintiff may kindly be taken a resort to.

5. After hearing the submissions and going through the record very carefully, this Court finds **no merits** in the present suit.

6. The factual aspect of the present case, to my mind, does not warrant any reiteration, being already elaborated above at desired length. As it appears, this happens to be a case involving the question as to the declaration of the civil death of one Mehanga Ram being not heard at all for 7 years and more by the plaintiff. Well, the only defendant seems to be arrayed over here is 'General Public'. As per **Section 34 of the Specific Relief Act, 1963**, which happens to be a mother provision dealing with the relief of the declarations, a declaratory relief is only to be granted, whenever there arises a threat or denial to the legal character or the property of any person, for the same, at first, postulates the existence of a defendant 'eo-nomine'. **Section 35 of the Specific Relief Act, 1963**, further provides that a declaration made under Section 34 of the Specific Relief Act, 1963, is a declaration in 'personam' and not the one in 'rem'.

7. Since in this case, as it is only the 'General Public' which is being arrayed as a sole defendant, in my considered opinion, such a vast declaration does not fall in the domain of the law laid down by Sections 34 & 35 of the Specific Relief Act, 1963. To my mind, the present suit in its vagueness can not be entertained on the above mentioned ground alone and that too, against the lone defendant namely 'General Public',

for a remedy 'personam' cannot be converted into a remedy in 'rem' by the plaintiff by the clever draft of the plaint. Result being, I hold that the suit in hand cannot succeed at all, even if it were to be treated to have been maintained under the head of Section 34 of The Specific Relief Act, 1963.

8. Next comes the question that as to what would be the fate of the suit, if I were to treat this suit to have been filed under the domain of **Section 9 of the Code of Civil Procedure, 1908**. To my mind, in that given eventuality as well, the suit in hand shall again meet its dismissal at the hands of the Court on a very simple account that there was no tangible defendant at all so arrayed in the matter. One such matter had attained the attention of the Hon'ble Bombay High Court in '**Swati vs. Abhay**', in reference to the **Second Appeal No. 18/2016**, so decided on **26.02.2016**, where the Hon'ble High Court of Bombay had *suo moto* impleaded the 'State of Maharashtra' as a party therein, whereas, in this case, no such application to implead any particular defendant was ever moved forth by the plaintiff. Result being, the suit in hand shall not meet the same fate, as intended to be so by the plaintiff. *In-consequentia*, I hereby maintain in reiteration that the suit in hand, in its given form, shall not at all lie against the defendant 'General Public' and the same accordingly stands **dismissed** against the lone defendant namely 'General Public'.

9. Thus, the present suit of the plaintiff **fails** and the same is hereby confirmed to be ordered to be **dismissed** with costs. Un-exhibited

documents be returned to the parties, under the rules. Decree sheet be prepared accordingly. File be consigned to the Judicial Record Room *pronto*.

Pronounced in the open Court
Dated: 26.11.2024

Meharban, Steno-II

(Ankit Airi)
Civil Judge (Jr. Divn.)
Chandigarh
UID No. PB0455