

SUPREME COURT OF INDIA

Ranjit Kaur

Vs.

Harmohinder Singh & Ors.

C.A.No.9748-9749 of 2011

(G.S. Singhvi and Sudhansu Jyoti Mukhopadhaya,JJ.,)

02.11.2011

JUDGMENT

G.S. Singhvi,J.,

SLP (Civil)No.19714-15 of 2009

1. Leave granted.

2. The appellant is aggrieved by the order of the learned Single Judge of the Punjab and Haryana High Court whereby he allowed the revision filed by respondent No. 1 and vacated the order of injunction passed by the trial Court, which had been partly confirmed by the lower appellate Court insofar as it related to her forcible eviction from suit property, i.e. Kothi No. 84, Phase-IX, SAS Nagar (Mohali).

3. The appellant and respondent No. 1 were married in 1978. After 15 years of the marriage, respondent No. 1 filed a suit for permanent injunction for restraining the appellant from interfering with the suit property. On being noticed, the appellant filed counter claim and pleaded that in terms of Section 18 of the Hindu Adoptions and Maintenance Act, 1956, she is entitled to reside in the suit property. The trial Court dismissed the suit of respondent No. 1 and decreed the counter claim filed by the appellant. The first and the second appeals filed by respondent No. 1 were dismissed by the lower appellate Court and the High Court. Special Leave Petition (Civil) No. 4193/2000 filed by him was summarily dismissed by this Court vide order dated 16.3.2000.

4. In the meanwhile, respondent No. 1 filed a petition under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage on the ground of cruelty. The same was decreed by Additional District Judge, Ropar vide judgment dated 4.10.2001. The appeal preferred by the appellant was dismissed by the High Court and the decree of divorce was confirmed

5. After dissolution of the marriage, the appellant filed suit for permanent injunction and prayed that respondent No. 1 be restrained from alienating the suit property and interfering with her peaceful possession over the suit property. She also prayed for restraining Punjab Urban Development Authority (PUDA) (Respondent No. 5 herein) from issuing 'No Objection Certificate' to respondent No. 1 to enable him to alienate or transfer the suit property.

6. Along with the suit, the appellant filed an application under Order XXXIX Rules 1 and 2 CPC for grant of temporary injunction against alienation of the property and her dispossession. By an order dated 23.2.2005, the trial Court allowed the application and directed respondent No.1 not to dispossess the appellant. The trial Court also restrained PUDA from issuing 'No Objection Certificate' in favour of respondent No. 1.

7. On an appeal filed by respondent No. 1, the aforesaid order of injunction was partly set aside by the lower appellate Court and the restraint imposed by the trial Court against alienation of the suit property was withdrawn. However, a direction was given that in the event of alienation of the suit property, respondent No.1 shall incorporate the factum of pendency of suit in the transfer deed/sale deed and also make alternative arrangement for the appellant.

8. Both, the appellant and respondent No. 1 challenged the appellate order by filing separate revisions. The learned Single Judge adverted to the history of litigation between the parties and held that in the absence of any stipulation in the decree of divorce, the appellant was not entitled to an order of injunction against alienation of the suit property or a restraint order against her dispossession. In the opinion of the learned Single Judge, once the decree of divorce was passed, matrimonial relation between the parties ceased and, therefore, the appellant cannot continue to occupy the house owned by respondent No. 1 as of right. The learned Single Judge also opined that there was no justification to impose any restriction against alienation of the suit property by respondent No. 1.

9. We have heard Shri S. K. Dholakia, learned senior counsel appearing for the appellant and Shri Rohit Sharma, learned counsel appearing for respondent No. 1 and perused the record.

10. It is not in dispute that the decree of divorce passed by Additional District Judge, Ropar has become final. It is also not in dispute that the petition filed by the appellant under Section 125 of the Code of Criminal Procedure for grant of maintenance was dismissed by the concerned Court and in the decree of divorce, no provision was made for maintenance of the appellant including the right of residence in the suit property. Therefore, it is not possible to find any fault with the order passed by the lower appellate Court, whereby injunction granted by the trial Court against alienation of the suit property was vacated and there is no warrant for this Court's interference with the impugned order in so far as it confirms this part of the order passed by the lower appellate Court.

11. However, we find merit in the arguments of learned senior counsel for the appellant that the High Court was not justified in vacating the restraint order passed by the trial Court

against the dispossession of his client. Learned counsel is right in his submission that even though in the decree of divorce, the appellant has not been given a right of residence and her occupation of the suit property can be treated as unauthorized, respondent No. 1 cannot evict her except after following the procedure established by law. The material placed on record shows that the appellant had entered into the property as the wife of respondent No. 1. Therefore, even though, after passing of the decree of the divorce she may not have a legal right to continue to remain in possession of the suit property, respondent No. 1 cannot be given liberty to forcibly evict her.

12. In the result, the appeals are partly allowed, the impugned order is set aside insofar as it enables respondent No. 1 to forcibly evict the appellant from the suit property. This would necessarily mean that respondent No. 1 shall be free to evict the appellant from the suit property in accordance with law. The appellant's prayer for restraining respondent No.1 from alienating the suit property is, however, rejected and, to that extent, the appeals are dismissed. The parties are left to bear their own costs.