

(2000) 12 P&H CK 0055
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2093 of 1998

Smt. Savita Jaiswal

APPELLANT

Vs

Sushil Jaiswal

RESPONDENT

Date of Decision : 14-12-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2001) 1 CivCC 663 : (2001) 1 RCR(Civil) 558

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. C.B. Goel, for the Appellant; Mr. A.P.S. Shergill, for the Respondent

Judgement

R.L. Anand, J.—This is a Civil Revision and has been directed against the order dated 14.2.1998 passed by the District Judge, Ambala who allowed the appeal of the plaintiff and set aside the order of the trial Court which had dismissed the application under Order 39 Rules 1 and 2 CPC.

2. Some facts can be noticed in the following manner. The plaintiff alleged in the trial Court that he was the co-owner of the property bearing numbers 2292-93, 2292-93A and 2307-2308 situated at Kacha Bazar, Ambala Cantt, along with his mother and sisters. The defendant who was the widow of his brother Shri Sanjay Jaiswal and the defendant used to reside on the first floor of the building bearing No. 2292-93, 2292-2293-A and 2307-2308. After the death of Shri Sanjay Jaiswal, the defendant walked away from the 1st floor with her bag and baggage and defendant had an evil eye over the said property belonging to the plaintiff. She has hatched a conspiracy to dispossess the plaintiff from the said building. She has further threatened to alienate the said property unauthorisedly in order to create evidence in her favour.

3. The suit was contested by the defendant-petitioner and she stated that the property was exclusively owned and possessed by her and plaintiff has no right or interest in the portion occupied by her. During the life time of Sanjay Jaiswal

she along with her two children used to reside at the first and second floor of the property which is a triple storeyed building. There were three shops and the tenants were paying the rent to her. The possession of the plaintiff was with respect to one shop. It was also pleaded by the defendant that Shri Shiv Charan Lal Jaiswal who was the owner of the entire property executed a Will dated 2.7.1979 and according to the Will the property bearing Nos. 2292, 2293 (whole), 2292/1, 2308/1 were bequeathed to Sanjay Jaiswal, her husband. Shri Shiv Charan Lal breathed his last in November, 1979 and after his death, Sanjay Jaiswal became the owner in possession of the property which was inherited by her husband through his father.

4. The parties addressed arguments in the application under Order 39 Rules 1 and 2 C.P.C. and the Court of learned Additional Civil Judge, vide order dated 3.11.1997 dismissed the application for the reasons given in para No. 5 of the said order which are as under :

"5. Application/plaintiff has not been able to place on the record any document in support of its case. On the other hand, defendant/respondent has placed on the record a copy of the Will executed by Shri Shiv Charan Lal in favour of Sanjay Jaiswal, husband of defendant. He has also placed on the record a copy of assessment form of the Municipal Committee, in which mutation has been entered in favour of the defendant vide E.O. order dated 27.3.1990. Hence, prima facie case is made out in favour of the respondent/defendant. It is undertaken by the counsel for respondent/defendant during the course of arguments that she will not transfer the property but she may be permitted to let out the premises of her share and that she will not interfere in the property of the share of the defendant."

5. Aggrieved by the order dated 3.11.1997, the plaintiff filed the first appeal in the Court of District Judge, Ambala who vide order dated 14.2.1998 allowed the appeal as well as the application under Order 39 Rules 1 and 2 C.P.C. and gave the direction to the defendant-petitioner that she will not part with the possession of the property to anybody else till the final disposal of the suit nor she will alienate the property to anyone.

6. Aggrieved by the order dated 14.2.1998, the present revision has been filed by the defendant-petitioner.

7. I have heard Shri C.B. Goel, Advocate for the petitioner and Shri A.P.S, Shergill, Advocate appearing on behalf of the respondent and with their assistance have gone through the record.

8. Prima Facie this property was owned by Shri Shiv Charan Lal who executed a Will dated 2.7.1979 and portion of the disputed property was bequeathed in favour of his son who is the husband of the defendant-petitioner. After the death of the husband of the petitioner she inherited the interest of her husband.

9. The learned counsel for the petitioner submits that the property has already

been partitioned by meets and bounds.

10. On the contrary, learned counsel for the respondent submits that it is yet to be decided whether the property has been partitioned by meets and bounds or not ?

11. Be that as it may, the status of the parties, of course, will be of co-sharer even if it is assumed for the take of argument that the property is still joint. In these circumstances, it will be too much on the part of the Civil Court to direct a co-sharer not to use the property which is in her exclusive possession. Since the rights of the parties are yet to be determined, a direction could be given by the Civil Court to a co-sharer not to alienate the property during the pendency of the suit. To direct a co- sharer not to use the property or to give it to the tenants etc. will not be justifiable.

12. In these circumstances, I partly allow this revision and modify the impugned order and directions are given to defendant-petitioner not to alienate the property during the pendency of the suit. However, she may enjoy the possession of the property and she may also give the property on rent. She is further directed to utilise the property like a husband like manner.

13. Nothing stated above shall amount an expression of my opinion on the merits of the suit.

14. The trial Court is directed to expedite the suit as early as possible.

Dasti as well.

15. Revision partly allowed.