



09.07.1984, defendant No.1 agreed to sell 50% of her share i.e. 7/160 share in the suit property in favour of plaintiffs. Defendant No.1 backed out from agreement. Plaintiffs were constrained to file suit for specific performance. The same was decreed on 25.10.1997. After defendant No.1 failed to abide by the mandate of the decree, Local Commissioner appointed by the Court executed sale deed dated 23.11.1998 in favour of the plaintiffs. The plaintiffs thus became joint owners to the tune of 7/160 share in the suit property.

4 As per plaintiffs, there exists memorandum of settlement among the co-sharers. As per the same defendant No.1 got possession of 3rd floor with Shri Jagjit Singh. She got possession of 66% share on 3rd floor. Defendant No.1 let out her share to different tenants and is collecting monthly rent from them. Plaintiffs claim that defendant despite asking has failed to render the accounts. No payment of rent whatsoever has been made to the plaintiffs till date despite the plaintiffs being ½ share holder in the share of defendant No.1. Plaintiffs claimed to be entitled to share the rent from the date of agreement to sell dated 09.07.1984.

5 Defendants appeared and filed separate written statement. Agreement to sell dated 09.07.1984 was disputed being forged and fabricated document. Passing of decree in favour of plaintiffs was denied. As per defendant No.1 the entire 3rd floor has been rented out to Social Welfare Department of Haryana Government. Defendant admitted receipt of rent, however, denied her liability to render the accounts of rent received by her to plaintiffs.



6 On the basis of the pleadings following issues were framed :-

“1. Whether plaintiff is entitled to the relief of rendition of accounts, as prayed for? OPP

2 Whether plaintiff is entitled to the declaration and mandatory injunction, as prayed for? OPP

3 Whether the plaintiff has not approached with clean hands? OPD

4 Whether the suit is not maintainable in the present form? OPD

5 Relief.”

7 Issue no.1 stands answered in favour of the plaintiffs holding them entitled to recovery of rent w.e.f. 08.11.2002 i.e. the date three years prior to filing of the suit. Issue No.2 also stands decided in favour of the plaintiffs. Suit filed by the plaintiffs was consequently decreed. They were declared to be owner to the extent of 7/160 share in the suit property and a preliminary decree was passed in favour of the plaintiffs directing defendant No.1 to render the accounts w.e.f. 08.11.2002 in relation to share of the plaintiffs in the suit property. The aforesaid findings stand affirmed by the Lower Appellate Court.

8 Learned counsel for defendant No.1 has assailed the findings recorded by the Courts below claiming that simple suit for declaration is not maintainable and is barred under Section 34 of the Specific Relief Act, 1963 (for short ‘the 1963 Act’). It has been claimed that the plaintiffs not being in possession ought to have claimed further relief of possession and mere suit for declaration was not maintainable. In order to hammer-forth his contention he relies upon judgments passed in *Gian Kaur Vs. Raghubir Singh 2011(4) SCC 567, Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust Virudhunagar Vs. Chandran & ors., 2017 AIR Supreme*



Court 1034, Mehar Chand Das Vs. Lal Babu Siddique & ors., 2007 AIR Supreme Court 1499 and K.C.Skaria Vs. Govt. of State of Kerala & anr., 2006 AIR (SC) 811.

9 I have heard learned counsel for the parties and have gone through the record of the case.

10 In order to appreciate the contention raised by counsel for the appellant, it will be apt to peruse Section 34 of the 1963 Act. The same reads as under :-

“34. Discretion of court as to declaration of status or right.-Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation. A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee.”

11 As per the mandate of Section 34 of the 1963 Act, a person able to seek further relief than a mere declaration of title if omits to do so, he is disentitled from getting declaration. In the present case admittedly the plaintiffs have become owner to the extent of 7/160 share in terms of sale deed dated 23.11.1998 executed in their favour pursuant to decree of specific performance dated 25.10.1997. Defendant No.1-the transferor *qua* plaintiff has leased out the entire share which is presently under possession of the



tenant. Thus the further relief that the plaintiffs could have asked for was rendition of the accounts from his co-sharer/transferor i.e. Defendant No.1-appellant. The issue with respect to transfer by one co-owner is governed by Section 44 of the Transfer of Property Act, 1882 which reads as under :-

44. Transfer by one co-owner. Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give, effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.”

12 The defendant No.1-appellant having transferred part of her share in favour of plaintiffs, the plaintiffs-transferee have acquired the transferor's right to joint possession and or other common or part enjoyment of the property. Thus the objection raised by counsel for appellant-defendant No.1 cannot be sustained.

13 No other point has been argued. Finding no merits in the present appeal, the same is ordered to be dismissed.

05.05.2025
Pooja Sharma-I

Whether speaking/reasoned:
Whether reportable:

(PANKAJ JAIN)
JUDGE
Yes/No
Yes/No