

Sardar Roop Singh & Anr vs Sardar Manjit Singh & Ors on 26 November, 2020

Author: Sanjeev Sachdeva

Bench: Sanjeev Sachdeva

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ RFA 90/2015

SARDAR ROOP SINGH & ANR

Through: None.

versus

SARDAR MANJIT SINGH & ORS

Through: Mr. Pulkit Aggarwal, A

the applicant/respon

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% 26.11.2020 CM APPL.29333/2020 (exemption) Exemption is allowed subject to all just exceptions.

1. None appears for the appellant.

2. Subject application has been filed by the respondent No.1 seeking release of the money deposited by the appellant with this Court pursuant to judgment and decree dated 15.11.2014.

3. Respondent No.1 had filed the subject suit for possession and recovery of Rs.4,11,400/- against the appellant. The suit was premised on the ground that the father of respondent No.1 was the owner of the subject property and he executed a will in favour of respondent No.1 bequeathing the subject property to him. Appellant is the brother of respondent No.1 who was residing in the subject property.

4. After trial, the Trial Court decreed the suit in favour of the MAGGU RFA 90/2015 Page 1 Signing Date:26.11.2020 19:32:20 This file is digitally signed by PS to HMJ Sanjeev Sachdeva.

respondent No.1 and holding respondent No.1 in ter-alia entitled to occupancy charges @ 14,000/- p.m from the date of institution of the suit (01.07.2020) till the delivery of possession.

5. Appellant had impugned the judgment and decree by this appeal. On 04.08.2015 learned counsel for the appellant submitted that for the period indicated by the Trial Court i.e. from 01.07.2010 till 31.07.2015, appellant shall deposit mesne profit @ 7500 p.m. in Court along with interest @ 12% per annum and thereafter the usage and occupancy charges would be paid @ 7500 p.m. to respondent No.1.

6. It is an admitted position that after 04.08.2015, the usage and occupancy charges @ Rs.7500 p.m. are being paid to respondent No.1.

7. This Court by order dated 04.08.2015 also directed that in case appellant were to succeed in the appeal, appellant would be entitled to recoup the amount received by the respondent No.1 during pendency of the appeal.

8. Respondent No.1 has sought release of the amount deposited @ 7500 p.m. in terms of the judgment and decree dated 15.11.2014 and as per the statement given by learned counsel for the appellant on 04.08.2015.

9. It is contended by learned counsel for respondent No.1 that the daughter of respondent No.1 is getting married on 29.11.2020 and son MAGGU RFA 90/2015 Page 2 Signing Date:26.11.2020 19:32:20 This file is digitally signed by PS to HMJ Sanjeev Sachdeva.

of the respondent No.1 is getting married on 13.12.2020. It is submitted that respondent No.1 requires money for the marriages of his daughter and son.

10. Though normally, if a party does not appear for physical hearing, no adverse orders are to be passed, however keeping in view the fact that the marriage of the daughter of respondent No.1 is scheduled on 29.11.2020 and a reply has been filed by the Appellant opposing the application, this application is being taken up for consideration.

11. Reply has been filed by the appellant to the subject application. The only contention raised by the appellant to oppose the release of the money is that the respondent No.1 is a government servant and drawing a handsome salary of Rs.65000-70000 p.m. and owns two shops on the ground floor of the subject property and has two sons and daughters who are also working and as such there is no requirement of any money.

12. Apart from taking the said ground, appellant has not shown any ground as to why the said amount be not released to the respondent No.1 particularly in view of the fact that after 04.08.2015 regularly mesne profits @ 7500 p.m. are being paid to respondent No.1 in terms of order dated 04.08.2015, subject to the condition that if the appellant succeeds in the appeal, he would be entitled to recoup the said amount from Respondent No. 1.

13. Learned counsel for the respondent No.1 undertakes on behalf MAGGU RFA 90/2015 Page 3 Signing Date:26.11.2020 19:32:20 This file is digitally signed by PS to HMJ Sanjeev Sachdeva.

of respondent No.1 that during pendency of the appeal, appellant shall not create any third party rights in the suit property without leave of the Court.

14. The undertaking is accepted.

15. In view of the above, this application is allowed. An affidavit of undertaking shall be filed by the respondent No.1 within two days, undertaking that during pendency of this appeal, he shall not create any third party rights in the subject property without the leave of this court.

16. Registry is directed to forthwith release to respondent No.1, the amount deposited with the Registry by the appellant pursuant to order dated 04.08.2015 along with interest, if any, accrued thereof.

17. It is clarified that any amount released to the Respondent No. 1 shall be subject to the final outcome of the appeal and subject to restitution, in case appellant succeeds in the appeal.

18. Application is allowed in the above terms.

19. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

NOVEMBER 26, 2020
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