

CANADA / JUDGMENT

Sohal v. Dhannu

2022 BCSC 2524

COURT

Supreme Court of British Columbia

DECIDED

23 June 2022

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2022 BCSC 2524 Sohal v. Dhannu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sohal v. Dhannu,

2022 BCSC 2524

Date: 20220623

Docket: E60435

Registry: New Westminster

Between:

Tarlochan Kaur Sohal also known as Terry Sohal

also known as Tejinder Sohal

Claimant

And

Bhajan Singh Dhannu also known as Bhajan Dhannu

also known as Harbhajan Dhannu,

Dhannu Holdings Ltd. and Dhannu Homes Ltd.

Respondent

Before: The Honourable Justice Lamb

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

R. McQueen

Counsel for the Respondent:

B.S. Sandhu

Place and Date of Hearing:

New Westminster, B.C.

June 17, 2022

Place and Date of Judgment:

New Westminster, B.C.

June 23, 2022

- [1] THE COURT (by videoconference): Bhajan Dhannu, the respondent in this family law action, is applying for an order pursuant to s. 90(2) of the Family Law Act, S.B.C. 2011, c. 25 for exclusive occupation of property located at [address redacted] Surrey, B.C. (the "family residence").
- [2] Tarlochan Kaur Sohal, the claimant in this action, opposes the application.

Background

- [3] Ms. Sohal is currently 57 years old, and Mr. Dhannu is 68 years old. The parties started living together in a marriage-like relationship in or around 2006. The parties separated in November 2011 and reconciled two months later.
- [4] On January 27, 2012, before reconciling, the parties signed a cohabitation agreement. Ms. Sohal is seeking to set aside or vary that cohabitation agreement as part of the relief she is seeking in this action. In the cohabitation agreement, the family residence is listed as Mr. Dhannu's property. Mr. Dhannu is the registered owner of the family residence.
- [5] After reconciling in late January 2012, the parties separated again on July 15, 2020. Both parties currently reside in the family residence. The family residence has an upper floor and a lower floor. The lower floor has three rental units. The claimant occupies the upper floor. The respondent moved into one of the three rental units on the lower floor in December 2020, after being out of the house for four months while facing criminal charges initiated by Ms. Sohal that were eventually dropped.
- [6] Ms. Sohal filed a notice of family claim on August 14, 2020. Mr. Dhannu filed a response to family claim on September 4, 2020. He filed a counterclaim on September 4, 2020, seeking to enforce the cohabitation agreement. No trial date has been set in this matter.

- [7] This application was originally scheduled to be heard on June 3, 2022. On that date, the parties entered into a consent order that provided neither party would communicate with the other and that neither would interfere with the other's ability to use and enjoy the property pending the hearing of this application.

The legal framework that applies

- [8] Section 90(2) gives the court authority to make an order granting a spouse, for a specified period of time, exclusive occupation of a family residence.
- [9] The parties agree that the test outlined in *Rinta v. Rinta*, 1980 CanLII 526, applies. The applicant must show that the shared use of the matrimonial home is a practical impossibility, and the applicant must establish that he is the preferred occupant on the balance of convenience.
- [10] I note that courts have recognized that the first part of the test has been modified, if indirectly, by the Family Law Act and its increased focus on family violence: *J.R.E. v. 07-----8 B.C. Ltd.*, 2013 BCSC 2038 at paras. 10 and 11.
- [11] Determining the balance of convenience requires the court to consider and weigh the advantages and disadvantages of such an order based on both parties' situations: *Evans v. Mahtoy*, 2015 BCSC 2141 at para. 30 [Evans].
- [12] In *Evans*, the factors considered by the court were the parties' ability to earn income, their mental and physical health, and other financial issues: see *Evans* at para. 41. Courts have recognized that a party's conduct is a factor that may be considered: *Sun v. Cook*, 2007 BCSC 2045 at para. 16.

The parties' positions

- [13] Mr. Dhannu says that the parties are no longer able to share the use of the family residence. He insists that he is the preferred occupant, relying in part on the evidence and preferences of the other tenants of the family residence and his friends in the neighbourhood.
- [14] In submissions, Ms. Sohal's counsel says that shared use is not necessarily an impossibility. Counsel suggests that the court could make further conduct orders and that the status quo should remain in place. Alternatively, Ms. Sohal says the balance of convenience favours her staying in the family residence due to her vulnerable financial circumstances.

Analysis

- [15] On the first branch of the test, I am satisfied that shared use of the family residence has become a practical impossibility. Both parties filed affidavits detailing their allegations of inappropriate conduct on the part of the other. It is common ground that the police have been called to the family residence a number of times due to conflict between the parties. Both parties allege that the other has physically assaulted them, and both deny the other party's accusations of violence.
- [16] Although her counsel says that shared use is not necessarily an impossibility, Ms. Sohal herself deposed that she is "unable to live with Mr. Dhannu as he is a nuisance and abusive towards me." Further, she deposed that she is "unable to tolerate Mr. Dhannu's abusive and manipulative nature." Ms. Sohal describes Mr. Dhannu as a dangerous man and says she feels unsafe around him.
- [17] Whether events occurred exactly as described in the parties' affidavits or not, and even if there was a benign motivation for some of the reported conduct, it is clear from an objective observer's standpoint that shared use of the family residence has become a practical impossibility. I am not satisfied that conduct orders are likely to end the unpleasant interactions between the parties.
- [18] Turning to the balance of convenience. Mr. Dhannu says that the balance of convenience favours granting exclusive occupancy to him for the following reasons:
- 1) he is the registered owner of the family residence;
 - 2) the family residence is excluded property under the cohabitation agreement; and
 - 3) the neighbours would prefer that Ms. Sohal goes and Mr. Dhannu stays.
- [19] On the other hand, Ms. Sohal says that the balance of convenience favours granting her exclusive occupancy for the following reasons:
- 1) she lives full-time in the residence and has nowhere else to go;
 - 2) Mr. Dhannu has other housing options; and
 - 3) Ms. Sohal has limited financial means.

Financial circumstances

- [20] Both of the parties are licensed realtors. Some of the disagreements appear to occur as a result of real estate transactions that one or both are involved in. The only evidence I have about Mr. Dhannu's earnings is that he collects \$2500 per month in rent from the other two tenants.

- [21] Ms. Sohal's lawyer argues that her income is limited. He points to her financial statement made April 27, 2021, in which she deposed that her employment income at that time was \$20,000 per year. The most recent notice of assessment attached to her financial statement showed a net loss in 2019 of just over \$7,000. However, her notice of assessment for 2018 showed net income of close to \$190,000.
- [22] There was no evidence before the court as to her current earnings, though she deposed that Mr. Dhannu's conduct often makes her late for work, which implies that she is working in some capacity.
- [23] Mr. Dhannu deposed that he loaned Ms. Sohal \$65,000 in September 2021 when she asked him for a loan, and then he loaned her a further \$7,000. Ms. Sohal does not deny receiving the loans, and she does not explain what she did with that money.
- [24] In Evans, the court considered who pays the expenses related to the property to be a factor in the balance of convenience test. I note that Ms. Sohal did not report any housing expenses on her financial statement, which suggests that Mr. Dhannu pays any such expenses for the family residence, though I recognize he receives the rental income.
- [25] On the available evidence, in my view, the financial factors do not clearly favour either party.

Other housing options

- [26] Mr. Dhannu says that Ms. Sohal only lives part-time at the family residence. He says that she often stays with her adult children from a previous marriage. Other witnesses corroborate to some extent that Ms. Sohal does not appear to reside full-time at the family residence, based on the absence of her vehicle. The other witnesses also say that Ms. Sohal makes noise and does other things to make her presence known when she is at the family residence, and some of the witnesses have concluded that she does not always stay overnight at the family residence.
- [27] Ms. Sohal, on the other hand, says that she lives full-time at the family residence and has done so continuously since 2012, other than a three-month period from August to October 2021, when she was in and out of hospital for health-related reasons.
- [28] Ms. Sohal says that her children live with her former spouse. Ms. Sohal says she has no other family in Canada with whom she might live, and she cannot stay at the family residence.
- [29] I note that Ms. Sohal deposed on August 18, 2020, that she was staying with her son and sleeping on the floor. She did not mention in that affidavit that her son lived with her former spouse.
- [30] On the other hand, Ms. Sohal asserts that Mr. Dhannu has various family members with whom he could reside. Mr. Dhannu responded by saying that the family residence is his home. He did not deny that he has other options. There was no evidence as to where he resided from August to December 2020.

[31] This factor favours Ms. Sohal.

Ownership of the family residence

[32] In weighing the balance of convenience, I have not ignored the fact that Mr. Dhannu is the registered owner of the family residence and that it is listed as part of his "separate property" in the cohabitation agreement. This is a factor that weighs in a small way in favour of Mr. Dhannu.

Conduct factors

[33] In deciding the balance of convenience in this case, I return to the conduct that makes continued cohabitation a practical impossibility.

[34] Although both parties allege inappropriate conduct on the part of the other, there are four witnesses who have corroborated that Ms. Sohal has engaged in disruptive conduct. I have considered the arguments advanced by Ms. Sohal regarding the reliability of those witnesses' affidavits. However, there is a certain consistency between the accounts of the various witnesses, without their stories being suspiciously similar. Each of the witnesses provides slightly different accounts based on their different vantage points and opportunities to observe Ms. Sohal's behaviour. I may have been less inclined to place much weight on those affidavits if they provided identical accounts, but they do not.

[35] Based on the available evidence, I conclude that Ms. Sohal initiates much of the interactions that make it a practical impossibility for both of the parties to continue to reside in the family residence. In this case, that is a significant factor in the balance of convenience.

Conclusion

[36] Given my conclusion that the current situation is untenable, it is not an option to leave the status quo in place. After weighing all the factors, I find that the balance of convenience favours Mr. Dhannu.

[37] I therefore grant Mr. Dhannu exclusive occupation of the family residence effective 10:00 a.m., June 30, 2022, until further order of the court or written agreement between the parties.

[38] The conduct orders consented to on June 3rd will continue to June 30, 2022. That is, neither party will communicate with the other, and neither will interfere with the other's ability to use and enjoy the property from now until June 30, 2022.

[39] Ms. Sohal shall remove her personal possessions from the family residence and deliver vacant possession to Mr. Dhannu by 10:00 a.m. on June 30, 2022.

[40] Ms. Sohal shall leave the family residence in a clean and tidy state by 10:00 a.m. on June 30, 2022.

- [41] Ms. Sohal shall not remove or damage Mr. Dhannu's personal possessions or any items inside the family residence that are not specifically ordered or agreed to be removed between the parties.
- [42] Ms. Sohal shall deliver, through her counsel, all sets of keys for the family residence in her possession to Mr. Dhannu through his counsel by 10:00 a.m. on June 30, 2022.
- [43] The deadline of June 30, 2022, for Ms. Sohal to give Mr. Dhannu exclusive occupation of the family residence may be revised by written agreement between the parties.
- [44] The application for a police enforcement clause is adjourned generally, and costs are in the cause.

"Lamb J."

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