

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.1134 of 2015

Decided on: March 20, 2015.

Gurdeep Singh and another

.... Petitioners

Versus

Harnarain Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. P.K. Gupta, Advocate,
for the petitioners.

M.M.S. BEDI, J (ORAL)

Plaintiff-respondent filed a suit for declaration claiming to be son of original owner Ram Singh on the basis of Will dated 24.05.1984 and challenging Will dated 19.09.1990 alleged to have been executed in favour of Iqbal Singh who was grandfather of defendant-petitioner No.1 and husband of defendant-petitioner No.2. Ram Singh was allegedly maternal uncle of Iqbal Singh. The petitioners claim their rights through a Will alleged to have been executed in favour of Iqbal Singh whereas the plaintiff-respondent claims right in the property being son of Ram Singh. On the basis of Will of the year 1990, the trial Court while deciding the application for interim injunction under Order 39 Rule 1 & 2 CPC restrained the defendants-petitioners from alienating the property in any manner whereas the lower Appellate Court has diluted the order by permitting the defendants-petitioners to alienate the land only to the extent of securing loan by mortgaging the same but the order restraining the defendants-respondents to alienate the property by sale or any other means has been confirmed. The defendants have filed this revision petition claiming that they were absolute owners on the basis of inheritance from Iqbal Singh, who had become owner

as per the revenue record on the basis of a valid Will.

Learned counsel for the petitioners has submitted that the suit has been filed after 21 years of the transfer of the property in favour of the successor in interest of the defendants-petitioners Iqbal Singh.

Counsel for the petitioners has cited judgment in **Kishorsinh Ratansinh Jadeja Vs. Maruti Corp. and others 2009 (2) Civil Court Cases 808,** in support of his contention that a person who has slept over his right for a long period should not be permitted to exercise his right of ownership.

I have heard learned counsel for the petitioners and gone through the judgment cited by counsel for the petitioners in context to the facts and circumstances of the case.

The suit filed by the plaintiff-respondent is in the capacity as son of the original owner and the defendants-petitioners claim to be successors in interest of the original owner having acquired right by virtue of Will in favour of Iqbal Singh. The rights of the parties are to be determined by the Courts below. It will be equitable in the circumstances of the present case to maintain the title of the property till final decision of the case lest it should result in multiplicity of the litigation. The grant or refusal of the injunction is a discretionary relief. In the present case, the said discretion has been exercised by the lower Appellate Court by granting some leniency to the defendants-petitioners to raise loan by mortgaging the property but maintaining the title. I do not find any illegality in the said order.

Dismissed.

(M.M.S. BEDI)
JUDGE

March 20, 2015
harsha