

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

SR. NO. **219**

CR-1915-2014

Decided on: 15.05.2015

KAKKA SINGH

.....Petitioner

VS

MOHINDER SINGH

.....Respondent

CORAM HON'BLE MR. JUSTICE K.KANNAN

Present: Mr.Sandeep Jasuja, Advocate for the petitioner.
Mr. Manmohan Upneja, Advocate for the respondent.

K.KANNAN, J

Plaintiff's suit for injunction was dismissed holding *inter alia* that even as per the plaintiff's contention they were co-owners with the defendant and if at all, the suit could have been only for partition and not for injunction. In appeal, plaintiff sought for withdrawal of the plaint to file a fresh suit and secure suitable reliefs. The said application has been dismissed.

The counsel for the petitioner states that the plaintiff intend to file a suit only for partition claiming himself to be heir of Indro Bai while the Ist defendant's contention is that he is the only son of Indro Bai and the plaintiff and the 2nd defendant are children born to the father through two other wives, each one of the three, being an issue to each of the two wives. The contention of the defendant is denied by the plaintiff's counsel that the plaintiff sought for mutation of the property standing in the name of Indro Bai but that was declined by an order issued on 23.09.2014.

The mutation proceedings cannot decide the issue of title. The question whether plaintiff and the 2nd defendant are entitled to a share in the property or not will only be adjudicated after a full-fledged trial. Lower Appellate Court has observed that the plaintiff did not even file a replication to deny the contentions raised in the written statement and persisted with the suit inspite of objection raised by the defendant against the maintainability of a suit for injunction. The defendant has been put on expense at

the trial Court and the Appellate Court before arriving this Court by a procedure adopted by the plaintiff in persisting with the relief which on the own showing was not appropriate. I am of the view that the interest of justice would be adequately satisfied if the plaintiff pays costs of ₹20,000/- as a condition precedent to the institution of the suit. The registry shall insist on proof of payment of costs if any new suit were to be instituted seeking for partition in the manner that is claimed by the counsel on behalf of the plaintiff.

The order already passed is set aside and the permission for withdrawal is granted with liberty to file a fresh suit for partition along with other ancillary reliefs subject to the condition of payment of costs as referred to above.

Revision petition is allowed on the above terms.

15.05.2015
mamta

(K.KANNAN)
JUDGE