

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

**Civil Revision No. 2796 of 2014
Date of decision: 23.02.2015**

Gurmukh Singh

..... Petitioner

versus

Ranjit Kaur and others

..... Respondents

Coram: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Ashok Aneja, Advocate
for the petitioner.

Mr. Naveen Batra, Advocate
for respondent No. 1.

Mr. H.K.Aurora, Advocate
for respondent No. 3.

Rakesh Kumar Jain,J.(Oral)

The petitioner is aggrieved against the order dated 19.10.2013 by which appeal filed by Ranjit Kaur against the order of the trial court dated 3.11.2011, allowing the application for temporary injunction filed by Gurmukh Singh/petitioner has been allowed and the stay with regard to alienation of suit property has been vacated.

In short, the case set up by the petitioner is that, he is the son of late Smt. Gurmeet Kaur and claiming her estate on the basis of natural succession, alleging that she has died intestate where as defendant Ranjit Kaur has set up the Will dated 5.04.2006, Amrik Singh has set up the Will dated 8.05.2008 and defendant No. 4 Balbir Kaur has set up a Will dated 31.08.2009. The appellate Court has allowed the appeal of Ranjit Kaur on the ground that the question as to whether the petitioner would succeed to the property of Gurmeet Kaur or not has not been adjudicated upon in another suit filed at the instance of Balbir Kaur against

the present petitioner as well as Ranjit Kaur. In that case, Balbir Kaur had claimed declaration that she has become owner of property in dispute on the basis of Will dated 31.08.2009 and challenged the Will in favour of Ranjit Kaur dated 5.04.2006. At the same time, he also denied the right of present petitioner to succeed to the property of Gurmeet Kaur by way of natural succession. The said suit filed by Balbir Kaur was dismissed on 26.04.2013 and the Will in favour of Ranjit Kaur dated 5.04.2006 was upheld. Balbir Kaur, plaintiff in that suit has challenged that judgment decree by way of an appeal which is pending and in that case alienation of the suit property has been stayed.

Learned counsel for the petitioner has argued that though there is already a stay in regard to the alienation of the suit property in the appeal filed by Balbir Kaur but if the stay granted to him in respect of the alienation of the same property is vacated then his right would be adversely affected.

Learned counsel for the respondent, however, submits that since the property in dispute is same in the appeal filed by Balbir Kaur in which the present petitioner is also one of the respondent, therefore, the stay granted in the case of Balbir Kaur would enure for the satisfaction of the petitioner in regard to alienation of the suit property during the pendency of the appeal therefore, the lower appellate court has rightly rejected the temporary injunction.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that the appellate court has not committed any error in vacating the order of stay because the petitioners is claiming the property in dispute on the basis of natural succession on the ground that his mother Smt. Gurmeet Kaur had expired

intestate whereas other defendants have set up their right over suit property on the basis of Will. The suit filed by Gurmeet Kaur, one of the legatee of the testament has already lost and the other legatee who had set up the Will dated 5.04.2006 namely Smt. Ranjit Kaur has succeeded. Therefore, right of the petitioner to succeed the property of her mother on the basis of natural succession is already under cloud because the Court has upheld the Will in favour of Ranjit Kaur dated 5.04.2006. Moreover, the appeal filed by Balbir Kaur is already pending in which the appellate court has granted status quo with regard to alienation of the suit property. To my mind the status quo would prevail upon the property and not in favour of the parties and in that matter the respondent who are impleaded in that case would not be in a position to alienate the suit property during the pendency of the appeal. Therefore, there is no need for passing a separate order of stay with regard to alienation in respect to the same property.

Thus, the present revision petition is dismissed.

[RAKESH KUMAR JAIN]
JUDGE

23th February, 2015
Shivani Kaushik