

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

Civil Revision No.2956 of 2014 (O&M)

Date of decision:19.03.2015

Kamla daughter of Ghisa Ram son of Chirajni, resident of Village Ahrod, Tehsil and District Rewari through her General Power of Attorney Shri Nemi Chand son of Ghisa, resident of Village Ahrod Tehsil and District Rewari.

... Petitioner

versus

Roshan Lal son of Nitya Nand, resident of Village Ahrod, Tehsil and District Rewari, and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Pawan Kumar Gupta, Advocate,
for the petitioner.

Mr. Jai Singh Yadav, Advocate,
for respondents 1 to 4.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

1. The revision petition is against the order of the appellate Court passed pending suit modifying the order passed by the trial Court issuing interim injunction sought at the instance of the plaintiff. The plaintiff's contention was that his father Ghisa Ram had died in the year 1993 and before his death, he was alleged to have suffered a decree in favour of his grandsons, admitting the

right claimed by the grandsons. The daughter has filed a suit in the year 2012, contending that the father's decree will not bind her and has sought for a declaration that she has a 1/4th share in the property and for injunction restraining the respondents from sale of the property.

2. In order that a person obtains an interim order, the test shall invariably be that the plaintiff has a prima facie case and if the injunction is not granted, very serious prejudice would be caused. This is a case of a daughter making a claim at 65 years to the share alleged to have left behind by the father and over which, she has a right which is sought to be taken away. The trial Court granted the relief of injunction and the appellate Court set it aside but directed that any alienation and construction by the defendants shall be done after taking permission from the court. It is this order which is put in challenge by the plaintiff before this court.

3. The learned counsel for the petitioner relies on several judgments which are in my view wholly irrelevant, but I cite them one after another to point out to the untenability of the pleas made. The counsel would rely on the judgment of the Supreme Court in **Gurupad Khandappa Magdum Versus Hirabai Khandappa Magdum and others-AIR 1978 Supreme Court 1235** to say that the widow's interest in the coparcenary property will be worked out by applying Section 6 proviso and Explanation-1 by invoking a

notional partition as made just before the institution of the suit and allot her share equivalent to her son. All over India that follows the Mitakshara, except Bombay, provided for a share at a notional partition only amongst coparceners, namely, of the father and the sons and granted no right to a widow. Only the Bombay school provided for a share to the widow equal to that of the sons. The Supreme Court was, therefore, according to the widow a 1/4th share which is not possible for any division of coparcenary property in Punjab. The reliance of the judgment of the Supreme Court is, therefore, irrelevant for our case. All that can be noticed in this case is that the claim was made by the daughter against the father on a plea that she had a right by birth. Such a contention is untenable, since there was no right to a daughter by birth under the Hindu Law by the then prevailing provisions at the time of father's death. The daughter has been given the status of a deemed coparcener only in Hindu Succession Act brought through amendment in the year 2005. The right to a share by birth at least cannot be taken to be prima facie possible for a court to grant an interim prayer.

4. The provisions of the Hindu Succession Act at the time of death of the father will make possible certain claims to a female heir under Section 6 Explanations-1 and 2 of the Hindu Succession Act. In fact, the Supreme Court's decision makes a reference to the said provision but was applying it to a widow governed by the

Bombay school of Hindu Law. In Punjab, the right to a daughter would not be a share equal to that of father and son at a notional partition by deeming a partition to have taken place which was before the death of the father. If a partition were to have taken place, the sons would be entitled to each a share equal to that of the father which would mean the father had a $\frac{1}{4}^{\text{th}}$ share. If the father was suffering a decree to his grandsons even if it may not operate to the whole extent of the property, it is certainly arguable that the decree will operate in respect of whatever share he had so that it could not be taken at least prima facie that he was leaving any property for intestate succession to take place and to make possible to a daughter to claim a share in the property. This, I take only as prima facie point of view so that the trial Court shall not treat it as concluded but will still allow for the plaintiff to make all the serious points to canvass for a legal position which she fancies she had. The daughter will get nothing, if her own father had parted with the right but the question of whether the father could not part with that right, the manner he did, is certainly a matter that will govern suitable consideration at the relevant time during trial. I have stated this only to show that the daughter has no prima facie interest in the suit to make a claim. Any interim order must be considered in a situation where the plaintiff has a strong prima facie case. The plaintiff has none.

5. The other judgments which the learned counsel refers me are the decisions about how the appellate court or the revisional court will not modify judgments rendered by the trial court. The judgments cited are: *Wander Limited and another Versus Antox India Private Limited-1990 SCC 727; M/s Julien Educational Trust Versus Sourendra Kumar Roy & others-2010(1) Civil Court Cases 312 (SC); Maharwal Khewaji Trust (Regd.), Faridkot Versus Baldev Dass-2005(1) Civil Court Cases 430 (SC); Skyline Education Institute (India) Private Limited Versus S.L.Vaswani and another-2010(3) Civil Court Cases 445 (SC)*. Any of these decisions do not answer the situation of, as we are confronting now. If the plaintiff has no prima facie case and she cannot obtain the benefit of interim order and if the trial court has granted the interim order, to argue that such interim orders will be persisted in all subsequent judicial tiers make a meaningless mockery of provision for appeals to higher forums. Appeals or revisions are not merely cosmetic exercises for some party to arrive and declare in pride that he had an occasion to travel to higher forums. Higher forums have a meaning that they restore justice in the manner that is possible if there is a brazen injustice. I would find that the first court granting an order of injunction was on a wrong assumption that the plaintiff had a prima facie case. I have delineated the propositions of law relating to a scope for a share for a daughter in the ancestral property

before the Hindu Succession Act amendment of 2005 and I have declared that if the father had himself parted with share in property during his lifetime, there would be nothing for his daughter to claim on succession. Consequently the interim order granted cannot be supported, not because the appellate court cannot interfere except under extreme situations but because the first court's order was clearly not taking note of the legal ramifications that were involved in the case and had granted the relief of injunction.

6. The counsel for the petitioner is gravely prejudiced that there is now an attempt of respondents to subject the building to a burden of installation of a telecom tower in one of the items of the property. I had asked at the previous hearing that whether installation could be so placed that if the plaintiff had to succeed at some point of time, her own interest in the property will not suffer. The counsel for the petitioner presents to me a plan to show that the installation is being made in the whole of the portion of the property abutting the road and in the event of her own share, she will be grossly prejudiced. The structure which is erected, is not so serious that a restoration to its original state is not possible. It is not as if an agricultural land is even converted to a full-fledged building for a residential purpose. Erection of tower if it ultimately results in its removal, will still leave a land for cultivation. I will not find any great prejudice as likely to result by the installation made by a

person who surely has a better claim to title to the property than the plaintiff.

7. I find no scope for interference with the order passed by the appellate Court that has taken note of the fact that there should be any alienation or construction and that the defendant should secure the permission of the court before such an action is done. That ought to take care of any possible prejudice to the plaintiff. The order of the lower appellate court below is sustained and the revision petition is dismissed.

(K.KANNAN)
JUDGE

19.03.2015
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