

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No.3964 of 2014

Date of decision : September 29, 2015

Rajvinder Kaur

..... Petitioner

Versus

Satnam Kaur and Others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr.Ashok Verma, Advocate for the petitioner.

Mr.Ajay Jain, Advocate for respondents No.1 and 2.

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

Amit Rawal, J (Oral)

Challenge in the revision petition is, to the order dated 03.03.2014, whereby, application, filed under Order 7 Rule 11 CPC by the petitioner-defendant, has been rejected by holding that the suit under Section 22 of the Hindu Succession Act, 1956 (for brevity 'the Act') was not maintainable but however, since the consequential relief of permanent injunction has been sought, therefore, the suit cannot be rejected.

Mr.Ashok Verma, learned counsel appearing on behalf of the petitioner-defendant submits that the respondent/plaintiffs had also filed a suit bearing No.863-C/12 (Annexure P-4) challenging the sale deed dated 03.10.2012 and also sought identical relief for permanent injunction. Therefore, the suit, claiming preferential/pre-emptory right in dwelling house was liable to be rejected as the aforementioned fact, has not been noticed by the Court below, while dismissing the application.

submits, that though the trial Court, formed an opinion that suit under Section 22 of 1956 Act was not maintainable, but did not reject the plaint on the premise that the plaintiff had sought relief of permanent injunction, thus, there is no illegality and perversity.

I have heard learned counsel for the parties and appraised the paper book.

It is a matter of record that once the plaintiff had already filed a suit challenging the sale deed dated 03.10.2012 and also sought permanent injunction, the second suit claiming pre-emptory right viz-a-viz dwelling house as per Section 22 of the Act, and permanent injunction would not be maintainable rather is liable to be rejected, for, the grievance of the plaintiff, if any, seeking injunction against the petitioner-defendant, can be redressed in civil suit bearing No.863-C of 2012 (Annexure P-4). Once the trial Court has already held that the suit under Section 22 of the Act was not maintainable it could not have kept a suit pending solely on the premise that plaintiff had claimed the relief of permanent injunction. I am of the view that the trial Court was oblivious that other suit i.e. civil suit bearing No.863-C of 2012 (Annexure P-4), wherein identical consequential relief of permanent injunction has been sought, was pending or not, therefore, in my view no prejudice would be caused to the plaintiff to seek an ad interim or permanent injunction.

In view of what has been observed above, the impugned order is set aside and application under Order 7 Rule 10 and 11 of CPC is allowed, as a result thereof and Civil Suit No.31-C dated 16.10.2012/20.02.2014 titled as *Satnam Kaur and another Vs. Rajvinder Kaur and others*, is hereby rejected.

Civil Revision is allowed.

(AMIT RAWAL)
JUDGE

September 29, 2015
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