

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

Civil Revision No.4839 of 2015 (O&M)

Date of decision: 03.08.2015

Amar Singh and others

.... Petitioners

versus

Ramchander and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Gurdev Singh, Advocate,
for the petitioners.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (*Oral*)

1. The revision petition is against an order allowing for sale of 4 kanals of land out of total extent which was said to be 160 kanals. The plaintiffs were seeking for a relief that the decree obtained by the defendant on 02.02.1979 was null and void and that the mutation that had taken place pursuant to the decree was also wrong, null and void and brought about by fraud and misrepresentation.

2. The plaintiffs represent one branch of the family through one Bachna son of Bija Ram, while the defendants were the persons whose another son Ramchander-the first defendant, who had

obtained a decree in the year 1979. The plaintiffs had given a statement during the pendency of suit that the defendants shall not sell the property otherwise than with permission from the court. The 1st defendant had sought for such permission on a plea that he had contacted a loan from a bank to the tune of ₹ 9 lakh which was long over due and he had to perform the marriage of the daughter and, therefore, sale of 4 kanals must be permitted. The plaintiffs objected to the same but the court found the reasons given to be justification enough for granting the order. The court also observed that the plaintiffs had themselves suffered a statement earlier that the property could be sold with the permission and if such permission was sought, the plaintiffs again cannot object to the same.

3. The learned counsel for the plaintiffs places the following arguments: (i) it is an admitted fact that the properties are ancestral and consequently, the decree obtained by the first defendant against his father without reference to the plaintiffs' rights cannot bind them; (ii) the statement already given by the plaintiffs that the property could be sold only with the permission from the court ought not to be understood as providing for a carte blanche for the defendant to sell the property whimsically and the court shall not abdicate its powers and allow for sale without examining the justification for the sale; (iii) the defendants, who were setting out the necessity for the sale produced no proof that there was

indebtedness with the bank and that there was any marriage to be celebrated.

4. Here is a case where the plaintiffs were seeking for assailing a decree which was obtained in the year 1979 through a suit instituted in 2012. The plaintiffs have a long way to traverse before they can secure the rights in the properties. The interim reliefs for a plaintiff which would allow for the injunction against sale must be on proof of a strong prima facie case. The assertion that the property was ancestral is not proving all. This is a case where the plaintiffs assail a decree made as not binding on them and none of the plaintiffs is a minor or person under any disability. If the plaintiffs would take about 30 years or more to come with their own suit, till their rights are found in favour by a court decree after trial, I do not think they can canvass for any strong prima facie case to prevent alienation.

5. The right to alienation is a necessary incident of ownership. The assertion of such right is at all times to be protected, for, even Section 10 of the Transfer of Property Act makes any agreement or transaction containing any clause or transaction constituting an absolute restraint to be void in law. This is in recognition of a principle of public policy that any fetter against alienation shall not at all times be immediately upheld unless there is a danger of a property being sold unlawfully and the claim is

brought by a person who has a very strong case and who apprehends that his own right of possession will be interfered. I have already observed that the plaintiffs have no prima facie case and they opted for what was easy without forcing a contested order of their claim for injunction initially. The plaintiffs have merely allowed for the defendant to sell the property after obtaining permission from court. The court has granted permission, after being satisfied with the reasons given by the defendant for effecting the sale. That satisfaction must reside with the trial Judge in the manner that the plaintiffs were prepared to cede to the court.

6. I will find nothing arbitrary or illegal about the order for an intervention in revision under Article 227. The order is confirmed and the civil revision is dismissed.

(K.KANNAN)
JUDGE

03.08.2015
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