

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5902 of 2015
Date of decision : September 9, 2015

Roshan Lal Rao

..... Petitioner

Versus

Jaswant Rao and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sudesh Kumar Khurcha, Advocate
for the petitioner.

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).

The challenge in present writ petition is against the impugned order dated 1.11.2013 and 22.7.2015 (Annexure P-2 and P-3)) whereby the application filed under Order 39 Rule 1 and 2 CPC at the behest of the petitioner-plaintiff, seeking restraint against respondents-defendants, from alienating the property, has been dismissed.

Learned counsel appearing on behalf of the petitioner-plaintiff submits that prayer in the suit was for seeking declaration for claiming share in the property and as well as challenge to the Will dated 7.6.2000 and as well as to the Will dated 28.2.2011 (Annexure P-11) The prayer in the application filed under Order 39 Rule 1 and 2 CPC was for seeking restraint against the

respondents-defendants from alienating the suit property as it would create multiplicity of litigation, in case the respondents-defendants succeed in selling the land, therefore, both the courts below have committed illegality and perversity in dismissing the application on account of erroneous reasons that the petitioner-plaintiff was not able to prove essential ingredients of Order 39 Rule 1 and 2 CPC i.e. prima facie case in his favour and also balance of convenience does not lie. He further submits that the appellate court, in paragraph 7 has also expressed a view on the merits of the matter, which ought not been deliberated upon while deciding the interim application. At the best the documents could have not been looked into while granting or declining the relief, sought for. The court was under an obligation to see whether the property was ancestral or self acquired property as it would seriously prejudice the trial of the suit, which is yet to commence.

I have learned counsel for the petitioner and appraised the paper book.

The provisions of Section 52 of the Transfer of Property Act, 1882 leaves no manner of doubt that no property can be sold during the pendency of the suit, any sale or alienation would be hit by the doctrine of lis pendence. In case, the defendant succeeds in selling, the same would be hit by the provisions of Section 52 of the Transfer of Property Act, 1882.

In view of what has been observed above, that alienation would not entail multiplicity of litigation, I do not find any illegality and perversity in the order as the appellant-plaintiff has not

been able to prove the ingredients of Order 39 Rule 1 and 2 CPC. As regards observations, of appellate court, noticed above in paragraph 7, I am of the view that same are liable to be expunged, for, it would erroneously prejudice the case of the petitioner-plaintif who is yet to lead his evidence. The court should not ponder upon the merits and demerits of the controversy while deciding the application under Order 39 Rule 1 and 2 CPC. For the sake of facility paragraph 7 reads thus:-

“Perusal of the record i.e., revenue record relied upon by the defendants No. 1 and 2 reveals that Puran Chand purchased the land comprised of khasra No.22//11min (6-1), 12/1 (3-0), 23//15/1(8-9) and mutation No.1538 was entered and sanctioned in his favour as is shown in the Jamabandi for the year 1983-84. Further, Puran Chand obtained khasra No.23//7(8-0) in exchange from Kartar Singh son of Wadhawa Singh vide mutation of Exchange No. 1582 as shown in the Jamabandi for the year 1988-89 which is on record. Puran Chand purchased the land comprised of Khasra No.22//11/1 (1-12) from Darshan Singh son of Madho Singh and mutation No.1783 was entered and sanctioned in the revenue record as shown in the jamabandi for the year 1983-84. Later Puran Chand acquired khasra No.22/10 (7-12) on the basis of mutations of exchange No.1563-64 as shown in the Jamabandi for the year 1983-84. The above khasra numbers constitute the entire land which is the subject matter of this case. From the above referred entries in the revenue record it stands amply established that the suit property in the hands of Puran Chand is his self acquired

property. Therefore, the claim of the appellant/plaintiff regarding suit property being Joint Hindu family Co-parcenary property is without any basis.”

The observation, explaining view on merits of the suit vide order dated 22.7.2015 are modified. Rest of the findings are upheld.

There is no merit in the revision petition. The order cannot be said to have passed without jurisdiction. The revision petition is accordingly dismissed.

**(AMIT RAWAL)
JUDGE**

**September 9 , 2015
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