

In the High Court of Punjab and Haryana at Chandigarh

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Civil Revision No.810 of 2015

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Date of decision:6.4.2015

Angrej Kaur

.....Petitioner

v.

Balwant Singh and others

.....Respondents

.....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Malhar Singh Dhami, Advocate for the petitioner.

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Inderjit Singh, J.

Angrej Kaur-petitioner has filed this civil revision petition against Balwant Singh-respondent No.1 and Smt. Akki and others-proforma respondents under Article 227 of the Constitution of India for setting aside the impugned order dated 18.11.2014 (Annexure-P.3) passed by Additional District Judge, S.A.S. Nagar and the order dated 18.2.2012 (Annexure-P.2) passed by Additional Civil Judge (Senior Division), Dera Bassi, District S.A.S. Nagar, whereby the application moved by Balwant Singh-respondent No.1/plaintiff under Order 39 Rules 1 and 2 CPC for temporary injunction in suit for declaration and permanent injunction has been allowed.

I have heard leaned counsel for the petitioner and have gone through the record.

Learned counsel for the petitioner argued that earlier a civil suit has been filed for declaration and for partition and for permanent injunction which has been decreed and the judgment and decree has become final. Plaintiff-Balwant Singh had already sold the share to Surinder Pal Singh-respondent No.8. Therefore, he has no share in the property and not entitled for any ad interim injunction there being no prima facie case in his favour nor balance of convenience lies in his favour.

A perusal of the record shows that Balwant Singh-plaintiff (respondent No.1 herein) filed the suit against Angrej Kaur etc. for declaration and for partition and for permanent injunction regarding the two houses. His main plea is that earlier the suit property was owned and possessed by Prabhu Ram and after his death, it was inherited by Prem Singh, Ram Pratap, Angrej Kaur and Chanan Kaur. The plaintiff is the only sole heir of Smt. Chanan Kaur being her only son and succeeded the right in the suit property being co-sharer. Defendants No.1 and 2 have intentionally and deliberately with full knowledge manipulated the facts with mala fide intention to deprive the plaintiff from his right in the suit properties and have filed the civil suit thereby seeking declaration and separate possession in the suit property to the extent of 1/4th share by misrepresenting facts and by committing fraud upon the plaintiff, as such the judgment and decree dated 19.4.2007 passed by learned Civil Judge (Junior Division), Kharar and final decree dated 9.9.2010 passed by learned Civil Judge (Junior Division), Mohali, deserve to be declared null and void being result of fraud and misrepresentation as the plaintiff was not impleaded as a party to the

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suit intentionally and deliberately despite the fact that he was a necessary party in that suit and defendants No.1 and 2 being plaintiffs in the suit have manipulated the facts and misrepresenting the same before the learned trial Court that the plaintiff being legal heir of Smt. Chanan Kaur have sold his share in both the houses as mentioned in the suit property despite the fact that he had sold his share to the extent of 1/4th share only in the land measuring 0-8 Marlas bearing Khewat/Khata No.75/77, Khasra No.8//20/2 (0-2) and 32 (0-6) situated in Village Zirakpur.

In the written statement before the trial Court, defendants No.1 and 2 and 8-A took the stand that decree under challenge has already been executed and the Court has no jurisdiction to set aside the same. It is also the plea of the defendants that the plaintiff has no right and share to claim in the property through Chanan Kaur, who expired in the year 1968. She was not entitled to claim partition and get share in the dwelling house in view of Section 23 before amendment made in Section 6 of Hindu Succession Act in the year 2005, which has no retrospective effect. The suit property being dwelling house, as such Chanan Kaur was not entitled to get any share in the same.

The learned Additional Civil Judge (Senior Division), Dera Bassi, vide order dated 18.2.2012 finding prima facie case in favour of the plaintiff-Balwant Singh, besides balance of convenience in his favour and that if the temporary injunction is not granted, the plaintiff will suffer irreparable loss, accepted the application.

I have perused the impugned order passed by the learned

Additional Civil Judge (Senior Division), Dera Bassi, which is correct and as per law.

In the written statement, there is no case of the present petitioner/defendant that the plaintiff-respondent No.1 has sold his share to respondent No.8 Surinder Pal Singh. Rather, the petitioner's case is that the plaintiff is not entitled to any share. A perusal of the judgment passed in the civil suit, which was filed by the present petitioner for partition, the case of the petitioner was that the plaintiff-Balwant Singh in this case has already sold his share to Surinder Pal Singh.

Even at the time of arguments, it was argued that plaintiff-Balwant Singh has already sold his share to Surinder Pal Singh, but this is not the case in the written statement of the present petitioner in this case. The learned Additional Civil Judge (Senior Division), Dera Bassi, has correctly held that though Chanan Kaur have no right to seek partition, but she has right to inherit the suit property. Plaintiff-Balwant Singh has not been made a party in the suit for partition and the decree has been passed in his absence. At this stage, the Court is only to see whether prima facie case is made out or not, which means whether on the face of it there is some case of the plaintiff which requires determination from the Court. There is prima facie case in favour of the plaintiff. Balance of convenience also lies in his favour and if the temporary injunction is not granted, the plaintiff-respondent No.1 will suffer irreparable loss.

Therefore, from the above discussion, the orders passed by the Courts below are correct and as per law and do not require any interference

from this Court.

Finding no merit in the present revision petition, the same is dismissed. However, the observations made herein shall not, in any manner, be construed as an expression of opinion on the merits of the case.

April 6, 2015.

(Inderjit Singh)
Judge

hsp