

CR-3374-2014

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-3374-2014

Date of decision : 17.02.2016

Bachan Kaur and others

... Petitioners

Versus

Mehal Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.S.S.Sodhi, Advocate
for the petitioners.

for Mr.R.S.Dhaliwal, Advocate
for respondent No.1.

Mr. Rishav Jain, Advocate
for respondents No.2 to 4.

REKHA MITTAL. J.

The present petition has been directed against the orders dated 28.02.2013 passed by the trial Court dismissing the application of the petitioners for grant of ad-interim injunction under Order 39 Rule 1 & 2 CPC and dated 14.03.2014 whereby the appeal preferred by the petitioners against the aforesaid order dated 28.02.2013 has been dismissed.

The petitioners have filed a suit for declaration to challenge the mutation of the suit land primarily on the ground that though the decree for specific performance on 17.07.1979 was passed against

husband of petitioner No.1 and respondent No.1 in equal shares but mutation was sanctioned in respect of the land owned by husband of the petitioner. Along with the suit, an application has been filed for grant of ad-interim injunction restraining the defendants from alienating the suit land. The application was dismissed by the learned trial Court and the order passed by the trial Court has been affirmed in appeal. A relevant extract from the operative order passed by the Court in appeal reads thus:-

“.....but otherwise, there does not appear to be any infirmity or illegality in the orders of the trial Court declining the injunction application. The relief has been sought only to the effect that defendants may be restrained from alienating their property beyond their share. It is obvious, they cannot alienate the property beyond their share and even if, the alienation is effected, that is subject to adjustment at the time of partition and there are principle of lis pendens to protect the rights of the plaintiffs, if any, against the alienation if effected by the defendants. Thus, the Court is of the opinion that no interference in the exercise of the jurisdiction by the trial Court in declining the application is required to be made. Thus, without prejudice to the merits of the case, the order of the trial Court is upheld.”

A careful reading of the aforesaid extract makes it evident that the Court has rightly held that any alienation of the suit land during pendency of proceedings would be hit by principle of lis pendens and the

transferee pendente lite would be bound by the decision of the Court. Equally true is that an alienation of suit property by a co-sharer beyond his share can neither create any better rights in favour of the vendee nor can cause any prejudice to the share holding / co-ownership of other co-sharers. This apart, an interference in an order passed by the Courts below while disposing of an application for grant of ad-interim injunction is warranted only if the order passed by the Court in appeal is perverse. Counsel for the petitioners has failed to point out any error in the impugned orders much less the same being perverse, warranting intervention by this Court.

For the foregoing reasons, the petition is dismissed. Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

(REKHA MITTAL)
JUDGE

February 17, 2016.
Davinder Kumar