

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 437 of 2016

Date of Decision: 22.01.2016

Gurvinder Kaur and Others

... Petitioner(s)

Versus

Inderpal Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Ajaivir Singh, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition is for setting aside the orders dated 19.8.2014 (Annexure P3) and dated 17.11.2015 (Annexure P4) passed by the Courts below, whereby application under Order 39 Rules 1 & 2 CPC for grant of ad interim injunction was dismissed and appeal filed by the petitioners was also dismissed.

Relevant facts of the case that plaintiffs had filed suit for declaration to the effect that they are joint owners of the suit land. Plaintiffs also sought rendition of accounts. As per plaintiffs, Amrik Singh formed joint hindu family with his mother Makhna Bai, wife Haripal Kaur and two sons, namely Daljit Singh and Inderpal Singh. Amrik Singh died

in Pakistan and in lieu of that, the suit land, mentioned at serial Nos. (a) & (b) in the heading of the plaint, was allotted in the name of Makhna Bai, who is mother of Amrik Singh, father-in-law of plaintiff No.1 and grandfather of plaintiffs no.2 & 3. The other brothers were having separate mess during life time of Mehtab Singh. Makhna Bai never claimed any exclusive right over the suit property. As per plaintiffs, property mentioned at Serial Nos. (c) & (d) was purchased by Amrik Singh in his own name as karta of joint hindu family, whereas property, mentioned at serial Nos. (e) & (f) & (f) was acquired in the name of defendant No.1. But defendant No.1 had no independent source of income. Amrik Singh, his wife and two sons always treated the property as joint hindu family property.

The defendants took the plea that property, mentioned at serial No. (a) of the third head note, was allotted to Amrik Singh and property, mentioned at serial No. (b) of the third head note, was purchased by Amrik Singh vide sale deed dated 29.6.1981. The property, mentioned at serial Nos. (a) & (b) of third head note, was purchased by Amrik Singh from his earnings as he was a Government servant. The property, mentioned at serial No.(c), was allotted by Punjab State Electronic Development and Production Corporation Limited , Chandigarh on the basis of lease deed for a period of 99 years dated 6.2.1979. Property, mentioned at serial No.(d), was allotted by Punjab Information & Communication Technology Corporation Limited to Mohinder Singh, Satnam Singh and Avtar Singh Gida, partners of M/s Gida Electronics.

The defendants denied the version of plaintiffs that suit property, mentioned at serial Nos. (a) to (d) of the third head note, was owned by Amrik Singh as joint hindu family property. As per defendant, property, mentioned at serial Nos. (a) & (b) of third head note, was acquired by him from his own funds and with the earnings of his wife. No property was inherited by Amrik Singh from Mehtab Singh. Amrik Singh had executed a Will, while he was of sound and disposing mind, on 21.2.2003 and the property was willed away in favour of Damanjit Kaur-defendant No.3. The land, mentioned at serial No. (a) of the first head note, was owned by Makhna Bai as she was allotted the land in the year 1955 by the Rehabilitation Department in lieu of the land left by her in Pakistan. More so, plaintiffs failed to challenge the gift deed and Will within a stipulated period and there being no prima facie case or balance of convenience in their favour and application was liable to be dismissed.

The Court of first instance dismissed the application for ad interim injunction. First Appellate Court also dismissed the appeal with the observation that there was no prima facie case or balance of convenience in favour of the present petitioners.

Learned counsel for the present petitioners submitted that the appellants being co-sharers are entitled to restrain other co-sharers from alienating the suit property. More so, Will and gift deed are yet to be proved during the trial of the case. Both the Courts below have completely ignored these facts while deciding the application for ad interim injunction and appeal against the said order and the present

petition be accepted by issuing directions to the respondents to restrain them from alienating the suit property during pendency of the litigation.

Having considered the submissions made by learned counsel for the petitioners and having gone through the record of the case, this Court is of the considered view that the present petition is against order having been passed on an application under Order 39 Rules 1 & 2 CPC read with Section 151 CPC for ad interim injunction and appeal having been decided against the said order. Both the Courts below have recorded concurrent findings of fact that the present petitioners have failed to make out a prima facie case or balance of convenience in their favour and there was no injunction order in their favour and they are not going to suffer any irreparable loss. Both the Courts below otherwise recorded that present petitioners failed to make out any case in their favour. Both the Courts below have taken the view that the suit property was purchased after obtaining mortgage loan from the Bank of India, which was repayable in 60 monthly instalments and the property, mentioned at serial No.(d), was allotted by Punjab Information & Communication Technology Corporation Limited to Mohinder Singh Gida, Satnam Singh Gida and Avtar Singh Gida, partners of M/s Gida Electronics and that a prima facie case and balance of convenience lies in favour of the defendants. Both the Courts below have recorded finding of fact that the plaintiffs failed to prove that the property was joint hindu family property. Rather to the contrary, it has been proved on the basis of documentary evidence that Sanad dated 27.9.1955 was issued in favour of Makhna Bai. Both the Courts below

also observed that as per jamabandi, Inderpal Singh has been shown as owner of the property.

Both the Courts below while placing reliance upon documentary evidence, i.e. copy of lease deed for 99 years dated 6.2.1979, copy of agreement of sale of plot measuring 100 square yards bearing No. E-72, Phase-VIII, Industrial Area, S.A.S. Nagar (Mohali) with Inderpal Singh Babbar dated 2.5.2003 for a sum of ₹ 10,75,000/- along with receipt of ₹ 4,00,000/- in cash paid as earnest money and copy of letter dated 5.6.2003 regarding transfer of the above said industrial shed, plaintiffs failed to establish that the suit property is joint hindu family property as claimed by them. The said findings of fact have been affirmed by the First Appellate Court.

There is absolutely no case in favour of the present petitioners for setting aside the said findings of fact, recorded by both the Courts below and present petition is without any merit and the same stands dismissed, *in limine*.

(Shekher Dhawan)
Judge

January 22, 2016

"DK"