

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

Civil Revision No.8060 of 2015

Date of decision : 11.01.2016

Maninderpal Kaur & Ors.

.....Petitioners

Versus

Jagdish Singh & Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. M.K. Garg, Advocate for petitioners.

DARSHAN SINGH, J.

The present petition has been preferred under Article 227 of the Constitution of India for quashing the order dated 05.05.2015 passed by learned Additional District Judge, Moga upholding the order dated 20.09.2013 passed by learned Additional Civil Judge (Senior Division), Moga, whereby the application moved by petitioner plaintiffs for ad-interim injunction under Order 39 Rules 1 & 2 of Code of Civil Procedure, 1908 (hereinafter called the 'CPC') has been dismissed.

2. Learned counsel for the petitioners contended that Nazar Singh deceased was physically and mentally infirmed. Defendant No.1 has procured the sale deed dated 13.03.2000 allegedly executed by Nazar Singh by way of misrepresentation and undue influence on the pretext of power of attorney. He contended that thereafter defendant No.1 transferred the disputed property in favour of his wife (defendant No.2) by transfer deed dated 06.10.2009. She has further alienated the suit property in favour of respondents No.5 to 10. Learned counsel for the petitioner contended that the appellants-plaintiffs are also the legal heirs of deceased Nazar Singh and had become the owner of the disputed property in equal shares as per the provisions of Hindu Succession Act. He further contended that as per the report of the Local Commissioner, appellant plaintiff Maninderpal Kaur is in possession of the house in dispute. Thus, he pleaded that respondent should be restrained from further alienating the suit property.

3. I have duly considered the aforesaid contentions.

4. The application for ad interim injunction moved by the appellants-plaintiffs was dismissed by learned trial Court and the said order has been upheld by learned Additional District Judge.

5. It is settled principle of law that scope for interference in the orders passed by learned courts below on the application under Order 39 Rules 1 & 2 CPC is very limited. The same is only permissible where the order passed by learned courts below is in violation of the principles governing the grant or refusal of ad interim injunction which has resulted in miscarriage of justice.

6. In the instant case, this fact is not disputed that the suit property was owned and possessed by Nazar Singh their deceased father. During his life time, he had executed the sale deed dated 13.03.2000 for sale consideration of Rs.2,20,000/-. The appellant has not placed on record any material to show that said Nazar Singh was suffering from any physical or mental disorder and was not capable of exercising the discretion in a proper manner. It is also not disputed that said sale deed was never challenged by Nazar Singh in his lifetime. Thus, there was registered sale deed in favour of defendant No.1 who has further transferred the suit property to defendant No.2, his wife, through registered transfer deed, who in turn had further sold her share in the suit property to defendant No.5 to 10. So, there is no prima facie material at this stage to assail the validity of these documents. Consequently, no restrain can be put on the right of the respondents to deal with the property in dispute.

7. Moreover, it is settled principle of law that if any alienation is made during the pendency of the suit the principle of lis pendens becomes applicable. So, there is no question of any irreparable loss to the plaintiffs-appellants.

8. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the impugned orders passed by learned courts below.

9. Consequently, the present petition having no merits is hereby dismissed.

11.01.2016
sunil yadav

(DARSHAN SINGH)
JUDGE