

Civil Revision No.7305 of 2016

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

Sr. No.104

**Civil Revision No.7305 of 2016
DECIDED ON: February 07, 2017**

SUKHWANT KAUR AND OTHERS

..PETITIONERS

VERSUS

NISHAN SINGH AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Harsh Aggarwal, Advocate,
for the petitioners.

JASPAL SINGH, J.

Through the instant revision petition preferred under Article 227 of the Constitution of India, petitioners have sought quashing/setting aside the judgment dated August 17, 2016 passed by learned Additional District Judge, Patiala (Annexure P-7) in MCA No.2-A dated January 06, 2016 captioned as '*Nishan Singh & ors. vs. Sukhwant Kaur & Ors.*' whereby upon acceptance of the appeal, an application moved by the petitioner before the trial court under Order XXXIX Rule 1 & 2 read with Section 151 CPC has been dismissed.

2. It has been argued by learned counsel for the petitioners that the impugned order is absolutely illegal, arbitrary, null and void and against the principles governing the grant of injunction. In fact, it is a result of misappreciation of the various documents available on file. The learned lower appellate court has lost sight of the fact that the property being inherited by one generation after the other becomes ancestral/co-parcenary property in the hands of sons at the time of their birth. Similarly, the lower appellate court has also failed to appreciate that Ganda Singh was allotted the land measuring 116K 18M at Village Alfuke in lieu of the ancestral property left by him at village Bhoepur (now in Pakistan) and the property located at village Dhakansu Kalan & Pehar Khurd was purchased out of the sale proceeds of the aforesaid ancestral property at Village Alfuke. Not only this, the learned lower appellate court has also failed to consider the fact that the property was sold at village Alfuke vide sale deeds dated December 28, 1959 and June 13, 1968 and with those sale proceeds, the properties were purchased at village Dhakansu Kalan & Pehar on May 29, 1959, January 08, 1960 and April 25, 1973. It was only due to the misappreciation of the aforesaid facts and documents, the lower appellate court has erred in holding that the property in dispute is self acquired property of respondent-defendant No.1. When it is prima facie proved that the property in dispute is the ancestral/coparcenary property, to avoid the multiplicity of litigation and to keep the property intact as well as nature thereof, appeal was liable to be dismissed and an application under Order XXXIX Rule 1 & 2 read with Section 151 CPC was rightly allowed by the trial court. Thus, the impugned order being against the legal principles governing the grant of

injunction is liable to be set aside and the order passed by the trial court deserves to be restored.

3. After bestowing due consideration to the aforesaid submissions made by learned counsel for the petitioners and scrutinizing the impugned order dated August 17, 2016, this court is of the considered view that no interference of this court is justified in the impugned order as the lower appellate court has exercised its jurisdiction in a judicious manner and in accordance with principles governing the grant of injunction.

4. Before proceeding, further to deal with impugned order dated August 17, 2016, it would be pertinent to mention here that the scope of interference by the revisional court with the orders of injunction granted or declined by the trial court is very limited. The lower appellate court or revisional court can only interfere with the order of injunction when it comes to the conclusion that court below has acted arbitrarily, perversely, capriciously or against legal principles without considering all the relevant record available on the file. Otherwise also, during the course of arguments, it has emerged that Hazara Singh respondent No.3-defendant No.1 purchased some property vide sale deeds dated May 29, 1959 and April 25, 1973 from its previous owners. In the said property, the legal heirs of pre-deceased son Hazara Singh were not having any pre-existing preferential rights. During his lifetime, he (Hazara Singh) transferred the suit land in favour of the respondent Nos.1 & 2 (defendant Nos.2 & 3). There is nothing on record to suggest that prima facie the property in suit is the joint ancestral/coparcenary property. Thus, the declining of injunction to the petitioners/plaintiffs is not likely to cause them any irreparable loss or

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injury. The balance of convenience also does not lie in their favour. Rather, the grant of injunction at the instance of the present petitioners/plaintiffs, in the case in hand, would likely to cause irreparable loss to the respondents/defendants as they will not be able to enjoy its fruits on the basis of the sale deeds in their favour. Imposition of any restriction on their rights to enjoy the property in husband like manner would not be legally and factually justifiable especially when the petitioners are protected under the doctrine of lis pendens and subsequent vendee(s) during the pendency shall be bound by the judgment to be passed in this matter/suit. Thus, this court is of the considered view that the lower appellate court has exercised its discretion rightly and judiciously while allowing the appeal and setting aside the order dated December 10, 2015 passed by the trial court.

5. In the light of what has been discussed above, instant petition stands dismissed. However, any observation made in this order shall not construed as an expression in the main suit and shall remain limited to the disposal of the instant petition.

6. No order as to costs.

February 07, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No