

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

CR No.7719 of 2016
Date of decision : 22.11.2017

Renu Sood

...Petitioner

Versus

Seema Sood and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunil Chadha, Sr. Advocate with
Mr. Akshay Chadha, Advocate for the petitioner.

Mr. Namit Gautam, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

The petitioner before this Court was added as defendant No.2 by Civil Judge (Junior Division), Ludhiana in the pending suit vide order dated 18.10.2016. The petitioner is aggrieved of the aforesaid order.

The plaintiffs i.e. Seema Sood and Prisha Sood, daughter-in-law and grand daughter of the petitioner had filed a suit for recovery of certain amount as arrears of maintenance and had also prayed for pendente lite and future maintenance and had also prayed for creation of the charge regarding arrears of the maintenance on the property of the defendant. The prayer made in the suit is extracted as under:-

“It is therefore respectfully prayed that a decree for recovery of Rs.1,50,000/- (Rupees one lac and fifty thousand only) being the arrears of maintenance w.e.f. 27.02.2016 to 26.04.2016 and for pendentelite and future maintenance with a direction to the defendant to pay maintenance at the rate of Rs.75,000/- per month in future. And for creation of charge regarding the maintenance on the property of the defendant measuring 170.37 sq. yards being one third share in the total property measuring 511.1/9 sq. yards comprised in khasra no.61//16/9, khata no.1655/1807 as per jamabandi for the year 2005-06 situated at Taraf Karabara hadbast no.161, now bearing plot no.9 property no.736-B Abadi Lajpat Nagar, Pakhowal Road, Ludhiana and bounded as under:-

East: Plot No.29 and 30

West: Road

North: Plot No.8

South: Plot No.10

And decree for permanent injunction restraining the defendant from alienating the above said property, may kindly be passed in favour of the plaintiffs and against the defendants with costs.

Any other additional or alternative relief to which the plaintiffs be found entitled to in the circumstances of the case, be also granted to the plaintiffs.”

During the pendency of the suit, the plaintiffs came to know that with a view to defeat the right of the plaintiffs, the original defendant i.e. the husband had transferred the property in favour of the mother i.e. the petitioner-Smt. Renu Sood. The plaintiffs filed an application for adding the petitioner as a party defendant. Learned trial Court allowed the application.

Learned counsel for the petitioner has argued that the suit itself

is not maintainable as there is no prior order determining the amount of maintenance and the suit is only for recovery of ₹1,50,000/-. He has further submitted that consequently, the charge cannot be created as the suit was not maintainable qua principle relief.

Learned counsel for the petitioner has further submitted that the learned trial Court has committed error in recording that the transfer was effected during the pendency of the suit whereas the transfer was prior to the filing of the suit i.e. on 18.01.2016 whereas suit was filed on 22.11.2016.

With regard to the first submission of the learned counsel, it is suffice to note that the plaintiffs had not only filed a suit for recovery but they had also prayed for fixing the maintenance pendente lite and future maintenance. The prayer made in the suit which has been extracted above clearly proves that the suit for maintenance has been filed under Section 18 of the Hindu Adoption and Maintenance Act, 1956. In these circumstances, the suit filed by the plaintiffs is maintainable. The plaintiffs are wife and child of defendant No.1. Defendant No.1 had transferred the property in favour of his mother to avoid any recovery. In such circumstances, the order passed by the Court adding the petitioner as defendant No.2 cannot be faulted.

Next submission of the learned counsel is that the suit for principle relief is not maintainable, therefore, even for consequential relief, the suit would not be maintainable. This argument has already been answered as the principle suit itself has been held to be maintainable.

No doubt, the learned trial Court has committed a error in

overlooking the fact that the transfer was made prior to the filing of the suit, however, that would not make any difference. Wife and the child has a prior right of maintenance and that prior right of maintenance is a charge on the property of the husband.

For the reasons recorded above, the present revision petition is dismissed.

22.11.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No