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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7993 of 2017 (O&M)
Date of Decision : 15.11.2017

GURMIT SINGH AND ANOTHER

....PETITIONERS

VERSUS

TIRATH KAUR @ TIRATHO DESSI AND ANOTHER

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Hitesh Kaplish, Advocate
for the petitioners.

B.S. WALIA, JUDGE (ORAL)

[1] Petitioners have challenged order dated 15.05.2017 (Annexure P-1), passed by the learned Additional District Judge, Jalandhar, whereby the order of *status quo* passed by the Court of the learned Civil Judge (Jr. Divn.), Phillaur on 19.11.2015 in Civil Suit RBT No.300 of 2013 was set aside.

[2] Brief facts of the case leading to the filing of the instant revision petition are that petitioner Nos.1 and 2 are the grand sons of deceased Swaran Singh and Bhago, while respondent No.2 is the mother of the petitioners. Petitioner No.1 had filed a suit for a declaration that the petitioners and respondent No.2 were entitled to 1/28 share of the suit property on the ground of natural succession. The suit was opposed by

respondent No.1 i.e. natural born daughter of deceased Swaran Singh and Bagho, by filing written statement taking up the plea that she alone was entitled to succeed to the property of deceased Swaran Singh on account of a Will executed by her father Swaran Singh on 24.04.1998 in her favour. Apart from the averments in the plaint to the effect that petitioners' father-Tirath Singh was adopted by Swaran Singh, no documentary proof in respect thereto has been referred to or attached. Learned trial Court by referring to the admitted fact of the property in question belonging to Swaran Singh as also of his having died and by taking note of the plea of the petitioners of the property liable to devolve on the basis of natural succession as also of stand of defendant-respondent No.1 of Will having been executed by Swaran Singh on 24.04.1998 in her favour granted order of *status quo* with regard to property in question to preserve the suit property and to avoid multiplicity of litigation.

[3] The matter was carried in appeal by respondent No.1 whereupon the learned Addl. District Judge, Jalandhar, vide order dated 15.05.2017 i.e. Annexure P-1, reversed the order of the learned trial Court by holding in paragraph No.12 of the impugned order that earlier application under Order 39 Rules 1 and 2 of the CPC for stay had been filed by petitioner No.1 but relief in respect thereto was denied by the then Civil Judge (Jr. Divn.), Phillaur vide order dated 01.11.2013. Subsequently, defendant Nos.2 and 3, i.e. petitioner No.2 and proforma respondent No.2 herein were impleaded as such in the suit whereafter a fresh application was filed under Order 39 Rules 1 and 2 of the CPC on

01.11.2013 itself by getting defendant Nos.2 and 3 transposed as plaintiff Nos.2 and 3.

[4] The learned lower Appellate Court observed that there was nothing on the record to show that the learned trial Court had passed the impugned order by considering the findings of its predecessor who had dismissed the application for stay filed by plaintiff/petitioner No.1 for the same relief on the same facts and documents. Reliance was also placed by the learned lower Appellate Court on the decision of this Court in 'Jaipal versus Smt. Bagmali', (2000) 1 RCR (Civil) 506 that principle of *res judicata* under Section 11 of the CPC was applicable to the Civil Suit at the stage of interlocutory proceedings but that there was an exception, where there was disclosure of fresh facts subsequent to the filing of the earlier application. The learned lower Appellate Court held that the application of plaintiff Nos.2 and 3 under Order 39 Rules 1 and 2 CPC and the order of the learned trial Court did not reveal plaintiff Nos.2 and 3 having pleaded fresh facts which merited filing of fresh application under Order 39 Rules 1 and 2 of the CPC. In the circumstances, in view of earlier order of dismissal of stay application of plaintiff No.1 for the same relief on the same facts, the learned lower Appellate Court held that the second application of plaintiff Nos.2 and 3 for the same relief could not have been allowed by the learned trial Court. Accordingly, the order of *status quo* passed by the learned trial Court was set aside.

[5] I have considered the submissions of learned counsel for the petitioners and am of the view that once the earlier application filed by petitioner/plaintiff No.1 under Order 39 Rules 1 and 2 CPC had been

dismissed on 01.11.2013 and thereafter a subsequent application had been filed on behalf of plaintiff Nos.2 and 3 who had in the meantime been impleaded as defendant Nos.2 and 3 and then subsequently transposed as plaintiff Nos.2 and 3 whereafter fresh application under Order 39 Rules 1 and 2 CPC was filed without pleading any new facts, then in the absence of any change in circumstances, a different order could not have been passed by the learned trial Court and that too without taking into account the order passed by the predecessor Court. Learned counsel for the petitioners has also not been able to refer to any pleading substantiating that Tirath Singh, father of petitioner Nos.1 and 2 and husband of respondent No.2 had been adopted by deceased Swaran Singh. No particulars whatsoever have been mentioned in respect of the aforementioned allegation. On the other hand, the natural born daughter has taken up the stand of Will having been executed by her deceased father in her favour on 24.04.1998. In the circumstances, petitioners have not succeeded in bringing their case within the parameters of the three pillars requisite for grant of injunction under Order 39 Rules 1 and 2 of the CPC namely by establishing *prima facie* case, balance of convenience and irreparable loss. Reference in this connection can be made to the decision of the Hon'ble Supreme Court in 'Shanti Kumar versus Shakuntala Devi', 2005 (1) ACJ (SC) 169. In the circumstances, I do not find any basis for interfering with the order passed by the learned lower Appellate Court.

[6] Accordingly, the petition is dismissed with no order as to cost. However, nothing said in this order shall be taken as expression on merits with regard to the claim of the parties and the same would be subject to the

outcome of the civil suit pending before the learned Civil Judge (Jr. Divn.),
Phillaur.

(B.S. WALIA)
JUDGE

November 15, 2017
rajneesh

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No