

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

Civil Revision No.1257 of 2018

Date of decision: May 11, 2018

Dr.Kuber Ghai

...Petitioner

Versus

Pallavi Vij

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sherry K.Singla, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioner Dr.Kuber Ghai has filed this revision petition against respondent Pallavi Vij under Article 227 of the Constitution of India for setting aside the order dated 22.01.2018 passed by learned Civil Judge (Junior Division), Patiala, vide which the application under Order 7 Rule 11 CPC filed by the petitioner-defendant has been dismissed.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that plaintiff-respondent Pallavi Vij filed a suit against Dr.Kuber Ghai, defendant-petitioner, for granting a decree of declaration to the effect that the plaintiff and defendant are joint owners in possession of property bearing house No.1 Venus Colony, Yadvinder Nursing Home-cum-Residential House total measuring 2060 sq.

yards; that mutation No.8130 dated 28.09.2006 sanctioned in favour of

Santosh Kumari, by AC-IIInd Grade, Patiala; Will dated 04.12.2012 alleged to be executed by Smt.Santosh Kumari and mutation No.10183 dated 30.01.2016, are unlawful, illegal, null and void and by way of partition by metes and bounds, plaintiff and defendant are entitled to ½ share each of the suit property and for consequential relief of permanent injunction.

During the pendency of the suit, an application was filed by the defendant-petitioner under Order 7 Rule 11 read with Section 151 CPC, for directing the plaintiff-respondent to make good the deficit of court fees. It is mainly stated in the application that plaintiff-respondent has challenged a registered Will duly executed by Santosh Kumari in favour of defendant on 04.12.2012. It is also stated that suit property has devolved upon the defendant as per the terms of registered Will. The plaintiff is claiming possession through partition of ½ share of the suit property by metes and bounds. The plaint shows that court fee stamps of ₹250/- is only affixed on the plaint, which is very much evident as per the pleadings in the plaint.

On the other hand, in reply, plaintiff-respondent stated that the application is not maintainable as defendant has no locus standi to challenge the right of the plaintiff in the property in question and the claim of the defendant is based on false and fabricated document in order to deprive the rights of the plaintiff in the suit property. It is further stated that Will is yet to be proved. The suit of the plaintiff is for the declaration of her rights and said right in the property left by her parents is to the extent of half share in the total property and claim that the said property is governed by natural succession.

Learned Civil Judge (Jr. Divn.), Patiala, vide impugned order

dated 22.01.2018, dismissed the application filed by the defendant-

petitioner.

The perusal of the plaint shows that plaintiff-respondent is not asking for possession and rather, asking for the declaration that she is joint owner in possession of the property in question whereas learned counsel for the petitioner-defendant has argued that plaintiff-respondent is seeking relief of possession. The main relief of the plaintiff is the declaration that she is joint owner in possession and consequential relief asking for partition of her ½ share by metes and bounds. Further, the plaintiff is asking for the declaration on the basis of natural inheritance. The plaintiff is sister of the defendant and is natural heir of Yadvinder Singh Ghai and Santosh Kumari i.e. parents of the parties. The Will set up by defendant is yet to be proved by producing evidence. In view of the above facts, I find that no question arises to affix *ad valorem* Court Fees.

Keeping in view above discussion, I find that no illegality has been committed by learned Court below while passing the impugned order. The impugned order dated 22.01.2018 passed by learned Civil Judge (Jr. Divn.), Patiala, is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

May 11, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No