

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

Civil Revision No.2224 of 2018 (O&M)

Date of decision: May 17, 2018

Manbeena

...Petitioner

Versus

Anupuma Kochhar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Brij Mohan Vinayak, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioner Manbeena has filed this revision petition against respondent Anupuma Kochhar under Article 227 of the Constitution of India read with Section 151 CPC, for setting aside the impugned judgment dated 07.12.2017 passed by learned Addl. District Judge, Amritsar, vide which appeal filed by the petitioner against the order dated 09.12.2016 passed by learned Civil Judge (Jr. Divn.) Amritsar, was dismissed.

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

From the record, I find that two applications under Order 39 Rule 1 and 2 CPC read with Section 151 CPC were filed, one by the plaintiff-respondent and other filed by defendant-petitioner in counter claim. Both the applications were dismissed by learned Civil Judge (Jr. Divn.), Amritsar vide order dated 09.12.2016. An appeal was filed by defendant-petitioner and learned Addl. District Judge, Amritsar vide

impugned judgment dated 07.12.2017, dismissed the appeal.

Aggrieved from the above-said order and judgment, present revision petition has been filed by petitioner-defendant.

From the perusal of the record, I find that plaintiff Anupma Kochar filed a suit for grant of decree of declaration to the effect that the plaintiff and the defendant are joint owners in possession to the extent of 1/2 share each of the suit properties on the basis of sale deed of Kothi no.143, Basant Avenue and sale deed of the farm house no.19 at village Tung Pai, Amritsar and the sale deed of flat no. 1-E, Road Number-9, D.L.F. Kutub Enclave Complex Gurgaon. Both Sh.Kuldip Singh Matta and Smt.Amolak Matta have expired on 28.12.2014 and 23.09.2015 respectively and both of them have died intestate and were survived by the plaintiff and the defendant being their daughters. After the death of their parents, the plaintiff and the defendant became joint owners of the suit properties on the basis of natural succession. The plaintiff along with the suit, filed application under Order 39 Rule 1 and 2 CPC.

On the other hand, defendant-petitioner appeared and filed written statement-cum-counter claim and reply to injunction application. Learned counsel for the defendant opposed the application on the ground that the suit is legally not maintainable. The plaintiff concealed the major facts from the court. The plaintiff is not in possession of any of three immovable properties. On merits, it has been admitted that the parents of plaintiff and defendant were joint owners of all three immovable properties. It has further been submitted that Sh.Kuldip Singh Matta had executed a legal and valid Will dated 09.09.2014 out of his free sound disposing mind

in favour of his wife Mrs.Amolak Matta and on the basis of said Will

Sh.Kuldip Singh Matta had given his $\frac{1}{2}$ share in all the three properties to Mrs.Amolak Matta and after the death of Sh.Kuldip Singh Matta, Mrs. Amolak Matta become exclusive owner of all the three immovable suit properties. Smt.Amolak Matta had also executed a legal and valid registered Will dated 16.07.2015 out of her sound disposing mind. As the defendant was having matrimonial dispute with her husband and she started residing with her parents in property bearing no.143, since 2006 along with her children and finally divorce took place between defendant and her husband in the year 2007 and as such Smt. Amolak Matta mother of defendant had given the said property plot no.143 to the defendant exclusively. It is further submitted that property situated at village Shahpur, Tehsil and District Gurgaon was given to plaintiff exclusively. Another immovable property which is situated at village Tungpai Suburban, Tehsil and District Amritsar was given to defendant and plaintiff in equal shares. It is further stated that the plaintiff is not having any right, title, interest or share of any type with respect the property bearing No.143, which is now exclusively owned and possession by defendant after the death of Smt.Amolak Matta. Along with the written statement, an application under Order 39 Rule 1 and 2 CPC was filed for restraining the defendant from interfering in the peaceful possession of the defendant qua both the properties i.e. plot no.143 and property bearing Farm House No.19.

The perusal of the impugned order and judgment passed by both the Courts below shows that these have been passed correctly and as per law. Admittedly, the parents of both the plaintiff and defendant were the joint owners in possession of the properties in question. The plaintiff and defendant are real sisters and daughters of Sh.Kuldip Singh Matta and

Mrs.Amolak Matta. Both Kuldip Singh Matta and Amolak Matta have already expired. The defendant is claiming exclusive right on two properties on the basis of Will executed by Smt.Amolak Matta. The Will is yet to be proved. The plaintiff is natural legal heir in both these properties, upon which the defendant is claiming exclusive ownership and possession. As the Will is yet to be proved by leading evidence before the Court, the plaintiff being the legal natural heir of her parents, has right in the properties.

As earlier, the parents of the parties were joint owners in possession, plaintiff and defendant being daughters will be treated as joint owners in possession till the Will is proved and exclusive possession of the defendant on the basis of the Will, is to be proved by producing evidence. Therefore, at this stage, in no way, it can be held that defendant-petitioner has prima facie case and balance of convenience lies in her favour.

Keeping in view above discussion, I find that no illegality has been committed by learned Courts below. The impugned judgment dated 07.12.2017 passed by learned Addl. District Judge, Amritsar and order dated 09.12.2016 passed by learned Civil Judge (Jr. Divn.) Amritsar, are correct, as per law and do not require any interference from this Court.

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

As the main case is decided, therefore, civil misc. application, if any, also stands disposed of.

May 17, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No