

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.44 of 2018

Date of decision:10.01.2018

Kanwaljit Singh

... Petitioner

Vs.

Jaspal Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arun Takhi, Advocate
for the petitioner.

AMIT RAWAL J.

The petitioner-plaintiff is aggrieved of the impugned order dated 13.10.2017 (Annexure P-6), whereby, the application moved under Order 39 Rules 1 and 2 CPC on behalf of respondent-defendant, has been allowed and petitioner has been restrained from parting with the possession of 1st and 2nd floors of House No.3448, Sector 35-D, Chandigarh and order dated 11.12.2017 (Annexure P-7), vide which the appeal filed against the order, has been dismissed. The petitioner-plaintiff claimed the following relief in the civil suit filed by him:-

“Suit for declaration to the effect that the alleged transfer deed dated 16.04.2013 allegedly executed by Shri Kartar Singh in favour of Jaspal Singh in respect of House No.3448, Sector 35-D, Chandigarh and the transfer of 100% share ownership right of above stated house in favour of defendant on the basis of alleged transfer deed is illegal, null and void and is the result

of fraud and mis-representation and the same is not having any binding effect on the rights, title and interest of the plaintiff and as such the same is liable to be set aside.

AND

Suit for permanent injunction restraining the defendant from alienating, mortgaging, gifting and entering into any agreement to sell in respect of house No.3448, Sector 35-D, Chandigarh and further to restrain the defendant from illegally and forcible dis-possessing the plaintiff from the first floor as well as second floor of house No.3448, Sector 35-D, Chandigarh during the pendency of the above stated suit as an alternative relief.”

Mr. Arun Takhi, learned counsel for the appellant-plaintiff submitted that late Kartar Singh son of Late Bhagwan Singh was the original owner of House No.3448, Sector 35-D, Chandigarh. The petitioner is the elder son of late Kartar Singh, whereas, respondent No.1 is the younger son of late Kartar Singh. Late Kartar Singh had three daughters and all were married, out of them one daughter namely, Charanjit Kaur had already died and the remaining two daughters are staying with their respective families. He had executed a registered Will dated 17.03.2004, which was duly registered in the office of Sub-Registrar, Chandigarh and as per the aforementioned Will, the aforesaid house alongwith other properties was bequeathed in favour of both sons in the following manner:-

“VI. And whereas my sons as stated above namely (i) S. Jaspal Singh and (ii) S. Kanwaljit Singh, are serving me well and are

providing me all the necessary (necessities) of my life and as per my requirements from time to time. House No.3448, Sector 35-D, Chandigarh, shall be inherited by my both sons as per details given below:-

(a) Ground floor of house No.3448, Sector 35-D, Chandigarh, shall be inherited by S.Jaspal Singh alone.

(b) First and second floor of the same House No.3448, Sector 35-D, Chandigarh, shall be inherited by my another son S. Kanwaljit Singh, alone.”

Thereafter, a family settlement deed dated 20.05.2005 was also arrived at between the petitioner, respondent No.1 and their father Kartar Singh and since then the parties are in possession of their respective share of house No.3448, Sector 35-D, Chandigarh. Reference to the family settlement, *ibid*, has also been made which reads thus:-

“9. That all the three parties to this deed further agree that in case of any of the parties decide at some later date to make a new agreement or Will or deed of any kind in respect of the properties in question, it shall do so only with the approval all of 1st party's three sons in law namely S.Rajinder Pal Singh and S. Mohan Singh and S. Harjit Singh.

Appendix-I

Division of house No.3448, Sector 35-D, Chandigarh between Kamaljit Singh and Jaspal Singh sons of Kartar Singh under family settlement.

Kamaljit Singh will hold take possession and enjoy exclusively

the use of 1st and 2nd floor of the house No.3448, Sector 35-D, Chandigarh. Kamaljit Singh will have the right to use stairs leading upto 1st and 2nd floor of the house.

Jaspal Singh will hold take possession and enjoy exclusively the use of entire ground floor of the house No.3448, Sector 35-D, Chandigarh.”

Respondent No.1, while taking the advantage of old age of Kartar Singh, allegedly got executed transfer deed dated 16.04.2013 in respect of House No.3448, Sector 35-D, Chandigarh and also allowed to run factory in some portion of Industrial Plot No.527, Phase 9, Mohali, for which the case is already pending in Civil Court, at Mohali. The aforementioned transfer deed has been challenged in the suit being an outcome of fraud and misrepresentation played upon the father of the petitioner, despite the fact that he had already expressed his last wish in the registered Will, *ibid*. The Chandigarh Administration had also transferred the aforementioned house in favour of respondent No.1 vide letter dated 13.08.2013, though the possession of first and second floor of House No.3448, Sector 35-D, Chandigarh is with petitioner-Kanwaljit Singh and possession of ground floor is with respondent No.1. It is in this background of the matter, the suit aforementioned was filed on 01.09.2014 (Annexure P-1).

Respondent No.1 had also filed a civil suit on 30.11.2015 (Annexure P-2) before the Civil Judge (Senior Division), Chandigarh for possession in respect of first and second floors of House No.3448, Sector 35-D, Chandigarh and for recovery of Rs.3,00,000/- as damages/mesne

profits. In both the cases, the respective defendants had filed their written statements.

In order to avoid conflicting decisions, the petitioner has filed an application before the District Judge, Chandigarh for transfer of both the cases to one Court, which has been allowed, vide order dated 20.09.2016 and both the suits were transferred to one Court. In the suit preferred by plaintiff, no prayer had been made for an interim injunction, but yet the defendant had moved an application dated 31.08.2017 under Order 39 Rules 1 and 2 read with Section 151 CPC for grant of interim injunction against the petitioner restraining him from parting with the possession of 1st and 2nd floors of House No.3448, Sector 35-D, Chandigarh.

The aforementioned application was contested by the petitioner by filing a reply dated 03.10.2017 (Annexure P-5) but the trial Court, vide order dated 13.10.2017, has allowed the same on totally erroneous and flimsy grounds. The appeal preferred against thereof, has been dismissed. He also submitted that the said application was not maintainable in the absence of main prayer in the suit, aforesaid and thus, urged this Court for setting aside the orders under challenge.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Arun Takhi, for, filing of the suit seeking declaration of the transfer deed itself proves the possession of first and second floors of House No.3448, Sector 35-D, Chandigarh, with petitioner and in the suit filed by Jaspal Singh defendant-plaintiff in his suit seeking possession in which the petitioner has been arrayed as defendant. The order of the trial

Court which has been upheld by the Lower Appellate Court is most innocuous and simpliciter, whereby petitioner-Kanwaljit Singh, had been restrained from parting with the possession of first and second floor of House No.3448, Sector 35-D, Chandigarh, during the pendency of the suit.

This Court called upon counsel for the petitioner to apprise whether his client has any intention to transfer the property, answer was in 'negative'. It was apprised that the only source of income of the petitioner was from creating the tenancy rights in the first floor of house in question but no particulars of such tenancy rights prior to filing of suit or at any subsequent stage before the dispute arose or during the pendency of the suit, had been pleaded or annexed. In the absence of the same, such plea of Mr. Takhi, is not tenable and the same is hereby rejected. Such an order, in my view, will prevent the multifariousness of litigation. Even if the Court below had disposed of the application by observing any transfer to be hit by *doctrine akin of lis pendence* as per Section 52 of the Transfer of Property Act but there have been cases where parties have been alienating the property compelling other party to move an application for impleading and this process of impleading sometimes goes for infinite period.

In my view, the order of the Court below restraining the petitioner-Kanwaljit Singh from parting with the possession of first and second floor of House No.3448, Sector 35-D, Chandigarh, is just and executable.

As regards the maintainability of the application, the same was not filed under Order 39 Rules 1 and 2 CPC but also by invoking the provisions of Section 151 CPC where the Court has inherent power which

deem it appropriate.

For the reasons aforementioned, I do not intend to differ with the orders under challenge *vis-a-vis* disposal of interim application. The revision petition while upholding the impugned orders, is hereby dismissed.

(AMIT RAWAL)
JUDGE

January 10, 2018
savita
Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No