

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

Sr. No.203

C.R. No.7606 of 2017

Date of decision: 18.09.2018

Balwant Singh

....Petitioner

versus

Mandeep Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. K.S. Boparai, Advocate
for the petitioner.

Mr. Sunil Chadha, Senior Advocate with
Mr. M.S. Atwal, Advocate
for the respondent.

* * *

DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 07.09.2017 passed by the Civil Judge (Junior Division), Payal (for short – 'the Trial Court') dismissing the application filed by the petitioner seeking rejection of the plaint filed by respondents No.1 to 3.

The facts in brief which are required to be noticed for adjudicating upon the present petition are that respondents No.1 to 3 filed a suit seeking maintenance from the petitioner and respondents No.4 and 5. Grant of permanent injunction to restrain the petitioner, who was defendant No.3 in the suit from alienating and creating any charge, equivalent to the amount of maintenance, upon the land owned by him was also sought. On being put to notice, the petitioner appeared before the Trial Court and filed an application under Order 7 Rule 11 CPC seeking rejection of the plaint on the ground that the same did not disclose any cause of action qua him. The

Trial Court rejected the petitioner's application occasioning the filing of the present petition.

Learned for the petitioner submits that respondents No.1 to 3 had filed the suit under Section 18 and 20 of the Hindu Adoptions & Maintenance Act, 1956 (for short – the Act) and such maintenance could have not been claimed from the petitioner, who was the grand father-in-law of respondent No.1 and great grand father of respondents No.2 and 3. According to the learned counsel, neither the above referred provisions of the Act nor any other provisions therein make liable a grand father-in-law and great grand father for payment of maintenance. That being so, for such maintenance, no charge could be created on the petitioner's property. It is still further submitted that if the petitioner is not liable to pay any maintenance to respondents No.1 to 3 no injunction can also be granted at their instance to restrain him from dispossessing them from the property owned by the petitioner.

Per contra, learned Senior counsel appearing on behalf of respondents No.1 to 3 contended that whether the petitioner is liable to pay maintenance or not would be a question which would be decided during the course of the trial and in any case, an injunction suit is certainly maintainable at the instance of respondents No.1 to 3 to restrain the petitioner from disposing of his property which as per them is coparcenary in his hands and which can be sold to discharge the payable maintenance at his hands as also in the hands of his son/grandson. It is further submitted that whether a grand father-in-law or great grand father is liable to pay any maintenance to his grand daughter-in-law or great grand children would be decided by the Trial Court after reference to the facts of the present case and

the evidence which may come on record as also after considering the relevant provisions of law.

The present proceedings arise from a order passed by the Trial Court on an application filed by the petitioner under Order 7 Rule 11 CPC as per which a plaint is liable to be rejected where it does not disclose a cause of action or where the relief claimed is undervalued.

In their suit respondents No.1 to 3 have claimed maintenance from the petitioner as well as respondents No.4 and 5. Respondent No.1 is wife of respondent No.4 and daughter-in-law of respondent No.5 whereas respondents No.2 and 3 are the minor children of respondent No.4, grand children of respondent No.5 and great grand children of the petitioner. In their suit, respondents No.1 to 3 have claimed maintenance from the defendants therein on several grounds including that they have been neglected to be looked after by them. Respondents No.1 to 3 have further prayed for the grant of injunction to restrain the petitioner from alienating or creating any charge on his property as according to them, such property is coparcenary in his hands which can be disposed of to discharge the payable maintenance to respondents No.1 to 3 and if such property is disposed of it would virtually become impossible for them to recover the maintenance which may be awarded to them. The case set up by respondents No.1 to 3 is that the petitioner as well as respondents No.4 and 5 are liable to pay maintenance to them and in any case even if no maintenance is awarded qua the petitioner since the suit property is coparcenary it can be disposed of to pay the debts of respondents No.4 and 5.

Whether the petitioner is liable to pay maintenance to respondents No.1 to 3? Whether the petitioner's property is coparcenary?

Whether the petitioner's property can be disposed of to discharge the debts qua maintenance payable to respondents No.1 to 3 by respondents No.4 and 5? Answers to all these questions would be subject to evidence to be led in the trial and interpretation of the applicable provisions of law based on such evidence.

In view of the above, at this stage, the plaint of respondents No.1 to 3 cannot be rejected.

Dismissed.

(DEEPAK SIBAL)
JUDGE

September 18, 2018

Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No