

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

114

CR No.7813 of 2017 (O & M)
Date of Decision:07.03.2018

Jagtar Singh

...Petitioner

Versus

Kulwant Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Lath, Advocate
for the petitioner.

ANIL KSHETARPAL, J.(Oral)

CM No.23955-CII-2017

Application is allowed, subject to all just exceptions.

Main Case

Plaintiff-petitioner is in the revision petition against the order passed by the learned First Appellate Court vacating interim injunction granted by the learned trial Court.

Plaintiff-petitioner has filed a suit claiming property on the basis of a registered Will from Sh. Nidhan Singh, whereas it is the case of the defendant that Nidhan Singh had gifted the property to his wife Parsin Kaur who thereafter by a registered sale deed transferred the rights in favour of the defendants. Plaintiff prayed that during the pendency of the suit defendants be restrained from alienating the property or changing the nature of the property.

Learned trial Court granted status quo with regard to the possession and alienation whereas the learned First Appellate Court after noticing the fact that the defendants are claiming property on the basis of a

registered sale deed and the plaintiff is claiming property on the basis of a Will which is yet to be proved, vacated the status quo order. Learned First Appellate Court has noticed that any alienation made during the pendency of the suit would be governed by the rule of lis pendens and would not affect the rights of the plaintiff.

I have heard learned counsel for the petitioner at length and with his able assistance gone through the voluminous record filed in this revision petition. Learned counsel for the petitioner submits that if the defendants are allowed to alienate the property, it would result in multiplicity of the suits. He further submits that an order restraining the defendants from alienating the property would not prejudice them. He has further submitted that the learned First Appellate Court has misread the Will while observing that the Will is only with respect to deposits in the bank accounts and not with regard to immovable property. He has further submitted that the learned First Appellate Court has also misread the gift deed.

This Court has considered the submission. In the present case, the Court has to evaluate prima facie the respective rights of the parties. On the one hand, plaintiff is claiming the property on the basis of a Will which is yet to be proved, whereas on the other hand, the defendants are claiming themselves to be owner in possession of the property pursuant to a registered sale deed executed by Parsin Kaur wife of Nidhan Singh, who was owner of the property.

This Court does not find any substance in the argument of learned counsel that the stay on alienation would not prejudice the defendants. Rather position is converse. The plaintiff's rights are protected

under the rule of lis pendens, and if a restriction is imposed on the defendants and the suit remains pending for a quite long time, a restriction is placed on the rights of the defendants, who are as of now, prima facie, owners of the property. With regard to the misreading of the Will, gift and sale deed it is suffice to mention that the suit is pending and the Court would adjudicate upon the rights finally after granting opportunity to the parties to lead evidence. Needless to observe that any observation made by the Court while disposing of the application for interim injunction would not bind the Court while finally determining the rights of the parties.

In view thereof, there is no scope for interference.

Revision petition is dismissed.

07.03.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No