

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

**Civil Revision No. 104 of 2018(O&M)
Date of decision : 01.05.2019**

Veena Kochar through LRs and others

..... Petitioners

versus

Gobind Ram Kochar through LRs and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.R.Hooda, Advocate for the petitioners.

Mr.Sanjay Verma, Advocate for the respondents.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 06.12.2017 whereby the application for leading additional evidence by producing Bank Manager, Punjab National Bank, Kalka, State Bank of Patiala, Kalka concerning the bank statements drawn in the name of defendants No. 1 and 2 in a suit claiming the following relief:-

“It is, therefore, most humbly prayed that in view of facts and circumstances as explained above, permanent injunction may please be granted in favour of the plaintiffs restraining the defendants No.1 and 2(defendant No.2 now deceased) from alienating ancestral properties i.e. constructed over plot no. 881, Parade Mohalla, Kalka (this was auctioned in favour of defendant no.1, by team of settlement officers from the Central Government, Delhi, on a total consideration of Rs.7100/- in the year 1965) and tenancy rights in a shop

at Kalka (later purchased by defendant no.1, in his name, out of sale proceeds from the sale of SCF no. 2 & 35, Sector 19-C, Chandigarh) and sale proceeds received out of already sold off two ancestral SCF No.1(now amended to SCF No.2) and SCF No.12(now amended to SCF No.35) at Chandigarh and suit for declaring 1/12th share in the ancestral properties which is presently possessed by defendant Nos. 1 to 4, in the interest of justice.”

has been declined.

Mr.Hooda, learned counsel appearing on behalf of the petitioners submitted that the nature of the suit is not only simpliciter for injunction but declaration seeking relief of 1/12th share in the ancestral property possessed by defendants No.1 to 4. The sale proceeds deposited in the account is on account of the sale dated 28.06.2017 which was during the pendency of the suit and, therefore, the same could not be placed on record though the suit is quite old as issues in the case were framed in 2010 and then after amendment in 2016. The additional evidence sought to be adduced goes to the root of the matter and learned counsel prayed for allowing the revision.

Mr.Verma, learned counsel appearing for the respondents submitted that there is no rebuttal evidence as such the additional evidence in the absence of the same cannot be permitted to be allowed. The counsel argues that this is an act of filling up the lacuna and adopting a delaying tactics and thus prayed for dismissal of the revision.

I have heard learned counsel for the parties and perused the paper book and am of the view that it is a subsequent event which has occurred only after sale deed dated 28.06.2017 whereas the suit was filed

way back in 2009. In such circumstances the argument of Mr. Verma would pale into insignificance. The suit is mainly hit by the doctrine of *lis pendens* but the aforementioned claim of seeking declaration of 1/12th share is essential and necessary for the adjudication of the suit. The courts below ought not to have rejected the application outrightly by noticing the adoption of the delaying tactics. Therefore, no prejudice would be caused if the aforesaid application is allowed and the impugned order is set aside.

The revision petition is thus allowed and the impugned order is set aside subject to payment of Rs. 5000/- as costs.

(AMIT RAWAL)
JUDGE

01.05.2019
sunita

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No