

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

**CR No.2737 of 2018 (O&M)
Date of Decision:30.01.2019**

Balwinder Singh and another

...Petitioners

Versus

Sarabjit Kaur and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Amit Dhawan, Advocate for the petitioners.
Mr.Rajinder Goel, Advocate for respondents No.3 and 4.
Mr.Ankit Kaushal, Advocate for respondent No.5.

ANIL KSHETARPAL, J.

The petitioners are in the revision petition against the order passed by the learned first appellate court, reversing the order passed by the learned trial court passed while dismissing the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure and directing the parties to maintain status quo qua the property in dispute in place of dismissal.

The plaintiffs have challenged correctness of two civil court judgments and decrees dated 17.9.1977 and 14.2.1989. They have also challenged the transfer deed dated 07.03.2002 as also various sale deeds executed. The suit has been filed on 08.02.2016.

The learned trial court, after appreciating the facts available on the record, declined to grant injunction qua alienation of the property. The learned first appellate court, however, chose to reverse the order by recording that it is yet to be proved as to whether the property is ancestral

coparcenary or not and whether the purchasers are bonafide purchasers or not?

In the considered view of this Court, the learned first appellate court has committed a material irregularity in reversing the order passed by the learned trial court. It is the plaintiffs who have come to the court, asserting that the property is coparcenary ancestral property. They have also challenged various judgments and decrees, transfer-deed and sale-deeds. In such circumstances, the plaintiffs had prayed for grant of injunction against alienation. Such alienation, if any made during the pendency of the suit, would be governed by the rule of *lis pendence* which make all alienations made during the pendency of the suit subservient to the result of the suit.

The learned first appellate court normally should not interfere with the discretion exercised by the learned trial court, while granting or refusing temporary injunction unless it finds that the discretion exercised is either perverse or result of some material irregularity. In the present case, the learned first appellate court has not recorded any such finding.

Keeping in view the aforesaid facts, the revision petition is allowed. The order under challenge is set aside and that of the learned trial court is restored. However, keeping in view the fact that the suit is pending for almost three years, the learned trial court shall make a sincere endeavour to dispose of the suit within a period of one year.

30.01.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No