

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 261

CR-583-2019

Date of decision : 14.05.2019

Rajpal Singh

..... Petitioner

VERSUS

Sayam Singla and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Parambir Singh (Sunny), Advocate, for the petitioner.

Mr. Gaurav Rana, Advocate, for respondent No. 1.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 09.10.2018, passed by the Civil Judge (Junior Division), Ludhiana, dismissing an application filed by the petitioner for appointment of a Local Commissioner.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the petitioner, alongwith others, filed a suit seeking therein to be declared joint owners to the extent of equal 1/3rd share each in the share of their predecessor-in-interest Harsome Singh @ Harsohan Singh, son of Komal Singh, son of Kartar Singh, son of Jiwan Singh in the land measuring 35 kanals and 19 marlas detailed and described in the head note of the plaint (for short, the suit property). The plaintiffs based their claim on a registered Will dated 06.11.1962 allegedly executed by Kartar Singh son of Jiwan Singh. Sale deeds executed by Sukhdev Kaur widow of Komal Singh in favour of defendants No. 1 and 2 to the suit and subsequent sales by subsequent vendors in favour of defendants No. 3 to 116 were also sought to be declared null and void. Permanent injunction to restrain the defendants in the suit from alienating, selling, transferring or changing the nature of the suit property was also sought. Alongwith the suit, an application for interim stay was also filed

under Order 39 Rules 1 and 2 CPC which was allowed by the Additional Civil Judge (Senior Division), Ludhiana on 07.06.2018 by passing the following order: -

“5. After hearing learned counsel for plaintiffs and gone through the documents placed on the file, it follows that the plaintiffs are the co-owners to the extent of 1/8th share out of total land and according to plaintiffs, the land was not sold by them. Plaintiffs also claimed that all the sale deeds made by Satwant Kaur wife of Komal Singh more than her share are null and void. Keeping in view the above said facts, a prima facie case is made out to grant ad-interim injunction restraining defendants from alienating, transferring or changing the nature of suit property to the extent of 1/8th share of the entire suit property. Balance of convenience is also lies in favour of plaintiff and in case, the further alienation has been made, it shall cause irreparable loss and injury to the plaintiffs and also creates multiplicity of the suits. Accordingly, the defendants are restrained from alienating, transferring or changing the nature of suit property to the extent of 1/8th share of the entire suit property, till further orders.

6. It is made clear that the defendants are at liberty and free to alienate, transfer or mortgage the property to the extent of 7/8th share but any sale made by the defendants onwards shall be subject to decision of partition proceedings of the suit property, if the necessity so arises. Compliance Under Order 39 Rule 3 CPC be made immediately.

7. Notice of stay application be also served upon defendants along with suit for 06.07.2018. Dasti process be also taken and defendants be served for the date fixed, failing which the exparte stay order, shall stand vacated automatically.

8. Present suit be put up on the date fixed before Ld. Civil Judge (Sr. Div.), Ludhiana, for entrustment purposes.”

Thus, the defendants in the suit were restrained from alienating, transferring or changing the nature of the suit property to the extent of 1/8th share of the entire suit property. However, they were at liberty to alienate, transfer or mortgage the suit property to the extent of 7/8th share but any sale made by the defendants in the suit was ordered to abide by the final decision in the partition proceedings.

Alleging contempt of the afore quoted stay order by respondent No. 1 for having raised construction over the suit property, and thus having changed its nature, the petitioner and others filed an application before the

Trial Court under Order 39 Rule 2-A CPC during the pendency whereof an application was filed by the petitioner and others seeking appointment of a Local Commissioner to visit the site and take photographs to prove their allegation that respondent No. 1 was raising construction over the suit property. On the admission made by respondent No. 1 before the Trial Court with regard to raising of construction over the suit property, which according to him he was doing on the property which fell in his share, the Trial Court dismissed such application. Such order of the Trial Court is under challenge in the present proceedings.

At the very outset, learned counsel for the petitioner submits that in view of the admission made by respondent No. 1 that he was raising construction over the suit property, he does not press the present petition. However, he prays that since he has alleged that respondent No. 1 is in contempt, the application filed by him under Order 39 Rule 2-A CPC be disposed of in a time bound manner.

In view of the above statement, the present petition is dismissed as not pressed.

However, since every litigant has a right to get his/her matter decided expeditiously, especially when violation of a Court's order is complained of, the Trial Court is directed to dispose of the petitioner's application filed by him under Order 39 Rule 2-A CPC within four months from the date of receipt of a certified copy of this Court.

14.05.2019
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No