

CR No.6533 of 2019

Date of Decision: 17.10.2019

Manjit Kaur and others

.....Petitioners

Versus

Sukhpal Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. J.K. Singla, Advocate
for the petitioners.

NIRMALJIT KAUR, J. (ORAL)

The present revision petition is filed for modification of order dated 06.09.2019, passed by the Principal Judge, Family Court, Bathinda, wherein, the application filed by the petitioners under Order 39 Rules 1 and 2 CPC read with Section 151 CPC for grant of temporary injunction & restraining the respondents/defendants from alienating/transferring the share of the ancestral land measuring 86 Kanal 0 Marla, was partly allowed i.e. only against respondent/defendant No.1.

The petitioner No.1 is wife and petitioner Nos.2 and 3 are children of respondent No.1. They filed a suit under Order 33 Rule 1 read with Section 151 CPC seeking maintenance of Rs.10,000/- per month from defendant/respondent No.1-Sukhpal Singh, under Sections 18 and 20 of Hindu Adoption and Maintenance Act, 1956. The application for interim injunction was allowed vide order dated 06.09.2019 and respondent No.1 was restrained from alienating of the suit property.

However, in spite of the said injunction, respondent No.1 sold the property to respondent Nos.2 and 3. The petitioners filed contempt petition, which is stated to be still pending. Thereafter, respondent Nos.2 and 3 were also impleaded in the suit. While finally deciding the application under Order 39 Rules 1 and 2, the trial Court by the impugned order dated 06.09.2019, restrained respondent No.1 from alienating the suit property except the property that had already been sold vide sale deed dated 27.02.2018 during the pendency of the suit on the ground that respondent Nos.2 and 3 were bona-fide purchaser for consideration without any notice and that respondent No.1 was still holding sufficient land measuring 51 Kanal 3 Marla, in order to meet of the charge of the maintenance to be paid to the petitioners.

Learned counsel for the petitioners however contends that the property in dispute was ancestral property. Respondent No.1, therefore, could not sell the same and in any case, since, the same has been sold during the pendency of the suit, an injunction should also been granted against respondent Nos.2 and 3 not to alienate the land, purchased by them from respondent No.1, during the pendency of the suit.

This Court may have agreed with learned counsel for the petitioners but for the admitted fact that respondent No.1 is entitled to only 1/3rd of the share in total land of 86 Kanal 0 Marla, meaning thereby, respondent No.1 has only 1/3rd share in the entire land of 86 Kanal. If it is so, as stated by learned counsel for the petitioners, then the share of respondent No.1 comes to only 28 Kanal 66 Marla. The petitioners, therefore, cannot claim any injunction against the land beyond 28 Kanal 66

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Marla. Thus, the remaining land is still in the hand of the petitioners. The trial Court has already granted injunction qua the remaining land.

Therefore, no injunction can be issued qua the land falling beyond the share of respondent No.1, which is only 28 Kanal 66 Marla.

It is clarified that respondent No.1 is held to have share only to the extent of 1/3rd out of a total land of 86 Kanal only on the basis of the stand of learned counsel for the petitioners and for the purpose of the present case. Hence, the same shall have no bearing on any other dispute or claim, if any, by respondent No.1 qua more than 1/3rd share.

Dismissed accordingly.

(NIRMALJIT KAUR)
JUDGE

17.10.2019
sandeep

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