

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 113

Case No. : C. R. No. 207 of 2019

Date of Decision : February 06, 2019

Ravi Kumar Petitioner

vs.

Yaspal and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Dinesh Arora, Advocate
for the petitioner.

Mr. Sandeep K. Sharma, Advocate
for the caveators/respondents no.1 to 6.

* * *

DEEPAK SIBAL, J. (Oral) :

The petitioner filed a suit for declaring the petitioner and respondents no. 1 to 4 as owners in possession in equal shares of the house detailed and described in the plaint (for short – the suit property). Will dated 21.09.2004 and the subsequent Will dated 04.09.2007, executed by the predecessor-in-interest of the parties was also challenged. Along with the suit, an application under Order 39 Rules 1 and 2 CPC was filed seeking to restrain the respondents from making any addition/alteration in the suit property or alienating the same during the pendency of the petitioner's suit. The Trial Court dismissed the petitioner's stay application and his appeal against such order met the same fate as his application at the hands of the

the present petition.

Learned counsel for the parties have been heard.

Respondent no. 1 – Yashpal, who was the beneficiary under the Wills impugned by the petitioner, transferred the property to his wife, who, in turn, transferred the same to their daughter – respondent no.6. Such transfers took place before the filing of the petitioner's suit. The genuineness of the aforesaid registered Wills, allegedly executed by Ram Lubhaya which have been impugned by the petitioner, is yet to be gone into as the trial has yet not commenced. Thus, as on date, respondent no. 6 is the exclusive owner of the suit property, who, at this stage, cannot be restrained from enjoying the fruits of the suit property.

Even otherwise, both the Trial Court as also the Appellate Court have concurrently found no prima facie case in favour of the petitioner on the ground that in an earlier litigation between the petitioner and his father Ram Lubhaya, his father had been declared to be the exclusive owner of the suit property. That being so, Ram Lubhaya could have transferred the suit property to anyone he desired.

Balance of convenience has also concurrently not been found to be in favour of the petitioner as at this stage of the trial, no defect is found with the ownership of respondent no. 6 over the suit property.

So far as irreparable loss or injury to the petitioner is concerned, both the Courts below have expressed the view that construction over the suit property, if any, by respondent no. 6, would be at her own risk and responsibility and would abide by the final decision to be arrived at in

the petitioner's suit and that if during the pendency of the petitioner's suit, the suit property is alienated, such alienation would be hit by the principles of *lis pendes*.

The concurrent view by both the Courts below have been gone into and in the facts of the present case, no error is found in the same.

In view of the above, no merit is found in the present petition.

Dismissed.

It is clarified that in case, respondent no. 6 alienates the suit property during the pendency of the suit, she would duly inform the Court in this regard.

(DEEPAK SIBAL)
JUDGE

February 06, 2019
monika

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>