

IN THE HIGH COURT OF PUNJAB AND HARYANA ATCHANDIGARH

CR-2555-2020

Date of Decision: November 26, 2020.

RANJODH SINGH DHANOYA AND ANOTHER

..... PETITIONER(s)

Versus

GURPREET SINGH AND ANOTHER

..... RESPONDENT(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Harinder Kumar Aurora, Advocate
for the petitioners.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

The petitioners are aggrieved of order dated 07.03.2020 (Annexure P-6), passed by the learned Appellate Court, Jalandhar, whereby order dated 23.04.2019 (Annexure P-4), passed by the learned Civil Judge (Senior Division), Jalandhar, on the application under Order 39 Rules 1 & 2 CPC, filed by the present petitioners (plaintiffs), has been modified.

Present petitioners filed a suit for declaration on 29.01.2018 that sale deed dated 25.03.2002 allegedly executed by late Shri Sadhu Singh i.e. their grand-father in favour of defendants no.1 and 2, is null and void. An application under Order 39 Rules 1 and 2 of CPC was moved alongwith the suit. Learned trial Court vide order dated 23.04.2019 (Annexure P-4) restrained the defendants from alienating the suit property during the pendency of the suit.

Appeal filed by the defendants against the impugned order dated 23.04.2019 (Annexure P-4) was disposed of by the learned Additional District Judge, Jalandhar, vide the impugned order dated 07.03.2020 (Annexure P-6), wherein order dated 23.04.2019 (Annexure P-4) of the learned trial Court was modified, while observing as under:-

“I have considered the rival submissions and am of the opinion that absolute restraint as put forth by learned lower court was unwarranted in the present case. This court do understand that in routine this court cannot question the discretion of learned lower court to pass interim injunction to preserve the lis. As far as balance of convenience and irreparable aspects are concerned, those are certainly in favour of plaintiffs. But before any injunction can be granted, the court is also expected to be satisfied that plaintiffs have prima-facie case. But here, except for the bald assertion that property is ancestral, no material is brought about nature of the property in the hands of Sadhu Singh. Unless that aspect is pleaded and brought on record, the property of Sadhu Singh prima-facie was required to be believed being his self acquired property, which he was competent to deal in his own way. Delay aspect of about 16-17 years cannot be ignored. In my opinion, plaintiffs were not having a prima-facie case and absolute restraint is not desirable. Even if plaintiffs ultimately succeed, they will be entitled only for a part of the property, whereas restraint has been put over whole property. It shall not be out of place that plaintiffs have merely argued that they are in the process of obtaining excerpt report and on that basis they shall prove the property to be ancestral one. But unless that document comes on record or at least jamabandis are produced, that prima-facie aspect was not there. So in the opinion of this court, order under challenge needs to be corrected in appellate jurisdiction. Accordingly, it is ordered that there shall be no restraint upon defendants to alienate the property keeping in view absence of any prima-facie case in favour of plaintiffs. But at the same time, to preserve lis it is ordered that if any alienation is made by defendants, then specific clause be put in the alienation/sale deed that it shall be subject to

decision of instant suit. Any alienation/sale in violation of this order shall be void and may also attract civil and criminal liability against violator of the order. This order shall protect the rights of both the parties. Instant appeal is accepted in terms of this court.”

It is not in dispute that the present petitioners as well as respondents-defendants are sons of Mohinder Singh. Late Jaswinder Singh son of Mohinder Singh is represented by his legal heirs.

Learned counsel for the petitioners is unable to point out any infirmity or irregularity in order dated 07.03.2020 (Annexure P-6), passed by the learned Appellate Court, Jalandhar which calls for interference by this Court in exercise of revisional jurisdiction. A specific direction has been issued that in case, there is any alienation of property in dispute by the respondents-defendants, a specific clause would be entered in the sale deed or the document of transfer to the effect that the same shall be subject to decision of the present suit and further any alienation or sale in violation of this order would be void and may also attract civil and criminal liability against the violator of the order. In addition to the above it is directed that necessary entry in respect to the pendency of the suit as well as the rider imposed by the learned Additional District Judge, Jalandhar be carried out in the relevant revenue records.

Accordingly, with the modification as above, this revision petition is disposed of.

26.11.2020

Sunil

**(LISA GILL)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No