

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

CR-4203-2018(O&M)

Date of decision:-1.12.2022

Gulshan Kumar and another

...Petitioners

Versus

Kartik

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Parminder Singh, Advocate for the petitioners.

Mr.R.K. Agnihotri, Advocate for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Kartik aged about 14 years, minor son of late Sh.Gagan Gandhi through his mother and natural guardian Smt.Priyanka had filed a civil suit against defendants Gulshan Kumar son and Smt.Sant Kumari – wife of late Sh.Krishan Lal, seeking partition with consequential relief of permanent injunction.

2. As per the version of the plaintiff, the suit property in the form of a residential house had been jointly purchased by grandmother of plaintiff and defendant No.2 vide a registered sale deed No.656/1 dated 14.5.1971 in equal shares; however vide a transfer deed No.2618/1 dated 19.7.2016, defendant No.2 had transferred her ½ share in the house in

favour of her son Gulshan Kumar – defendant No.1; about 20 years prior to filing of the suit, an oral family settlement had taken place between the parties in terms of which, rear portion of the house came to share of grandmother of the plaintiff, whereas front portion was allocated to defendant No.2; both the portions are having separate domestic electricity connections and the parties have been residing separately in the separate portions of the house allocated in oral family settlement, though formal partition of the house has not taken place so far; after death of grandfather of the plaintiff on 4.2.2006 and that of grandmother on 29.1.2016, the plaintiff became owner in possession of the house qua $\frac{1}{2}$ share being their only legal heir vide judgment and decree passed by the Court of Civil Judge on 5.7.2017; such possession is also reflected in the record of register of Municipal Corporation, Karnal; however on 18.10.2017 when the plaintiff along with his mother visited the house on the occasion of Diwali festival for cleaning it and to celebrate the said festival, they found that lock of one room was broken and a bed was missing; on inquiries being made by them from the defendants, no satisfactory reply was given, however, they stated that plaintiff had no concern with the house in question since Smt.Meena Kumari deceased had executed a Will in their favour. According to the plaintiff, the Will is surrounded by suspicious circumstances since date of execution is not mentioned therein and plaintiff being sole legal heir is entitled to $\frac{1}{2}$ share in the house. The defendants tried to dispossess the plaintiff from the said house and block the the gallery leading to the rear portion of the house, giving rise to a cause of action to the plaintiff to bring the suit in question. Along with the

suit, the plaintiff had moved an application for grant of ad interim injunction.

3. On notice, the defendants appeared and filed written statement and reply to the application for ad interim injunction contesting the suit and application. In the written statement, the defendants/respondents have challenged the maintainability of the suit as well as application for grant of ad interim injunction alleging that the plaintiff has concealed true and material facts from the Court; that during the life time of Smt.Meena Kumari, she was involved in protracted litigation with her son; Smt.Meena Kumar has disowned her son as well as daughter-in-law from her property by way of an affidavit dated 5.2.2008 and by inserting a notice in the newspaper; as a matter of fact, the plaintiff is residing in a house bearing No.E-10, NDRI, Karnal; the plaintiff does not even know about number of electricity connection installed at the house in question; earlier Ms.Priyanka mother of the plaintiff had got her name entered in the Municipal Tax Assessment Register, however later on that entry was rectified; as far as the decree in favour of the plaintiff, that was also challenged being wrongly obtained. Refuting the remaining allegations, the defendants prayed for dismissal of the suit as well as application for grant of ad interim injunction.

4. After hearing arguments, the trial Court of Civil Judge (Jr.Divn.), Karnal vide order dated 8.2.2018 allowed the application for ad interim injunction directing the respondents not to dispossess the plaintiff/applicant and not to block the passage leading to share of the plaintiff in the house till final disposal of the case.

5. Feeling aggrieved by the said order, the defendants had preferred an appeal before District Judge, Karnal, which was assigned to Additional District Judge, Karnal, who vide judgment 22.5.2018 dismissed the appeal.

6. Still feeling dissatisfied, the defendants have knocked at the door of this Court by way of filing the present revision petition, notice of which was given to the plaintiff/respondent, who put in appearance through counsel.

7. I have heard learned counsel for the parties besides going through the record.

8. The well settled law on the subject is that ad interim injunction is a discretionary equitable relief, which is to be granted by the Court if the plaintiff/applicant is successful in establishing that he has got a good prima facie case, balance of convenience lies in his favour and he shall suffer irreparable loss or injury in case of denial of at interim injunction.

9. The trial Court on touchstone of these ingredients vide a detailed and well reasoned order had come to the conclusion that it is not disputed that plaintiff is legal heir of deceased Smt.Meena Kumari and through defendants are claiming a Will in their favour, however genuineness of the same is yet to be established and furthermore simply because the plaintiff along with his mother is residing in a house at NDRI, Karnal does not lead to the inference that plaintiff and his mother are not in possession of the portion of the house in dispute since possession can be actual as well as constructive. The trial Court found a prima facie case

in favour of the plaintiff, further observing that balance of convenience lies in favour of the plaintiff, for that reason the application was accepted. When challenged in appeal, the Court of learned Additional District Judge, Karnal put seal of approval on the order passed by the trial Court giving observation that plaintiff Kartik was grandson of late Smt.Meena Kumari alias Shanti Gandhi, whereas defendant No.1 Gulshan Kuamr was from distant relation of Smt.Meena Kumari and further the Will relied upon by the defendants is a doubtful document since it does not bear the date when it was executed and at the time when it was allegedly executed by the executrix Smt.Meena Kumari, she was suffering from severe disease of paralysis and mental disorder and further there was no sufficient reason for Smt.Meena Kumari to divest her grandson Kartik from inheriting the share of the house in question. Finding no illegality or infirmity in the order passed by the trial Court, the same was upheld by learned Additional District Judge, Karnal.

10. After hearing the rival contentions of learned counsel for the parties, I do not find any reason to interfere with the orders passed by the Courts below. Those are certainly not perverse or arbitrary and have not been, passed in violation of settled principles for grant of ad interim injunction, rather the orders appear to have been passed after due application of mind keeping in view the legal and factual possession. Even otherwise, the trial of the suit is stated to be almost complete and the suit is likely to be decided on merits shortly. Therefore, no reason is there to interfere with the orders passed by the Courts below, which are detailed and well reasoned.

11. Thus, finding no merit in the civil revision petition, the same stands dismissed.

1.12.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No