

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

CR-274-2022

Date of decision: 01.02.2022

SWARAJ SINGH AND ANOTHER	...Petitioners
	V/S
LACHHMAN KAUR AND ANOTHER	...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Harsh Chopra, Advocate,
for the petitioners.
(Presence marked through Video Conference)

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ARUN MONGA, J. (ORAL)

Petition herein, under Article 227 of Constitution of India is for setting aside the impugned order dated 03.01.2022 (Annexure P-6) passed by learned Civil Judge (Jr. Division), Jalandhar vide which an application under Section 151 CPC has been disposed of in favour of the respondent/plaintiffs, by directing the petitioners to restore the possession of the respondent/plaintiffs at least one bedroom, washroom and kitchen within a period of seven days, failing which liberty was granted to the respondent/plaintiffs to approach the SHO of Police Station, Division No.7, who will ensure the compliance of the aforesaid order.

2. Petitioner/defendant is grandson and plaintiff no.1 is his grandmother and plaintiff no.2 is his paternal grand uncle.

3. I have heard learned counsel for the petitioners and gone through the case file. Order assailed herein, inter alia, is premised on the following reasoning:

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5. There is another aspect to the case in hand. The same though, not pleaded cannot be overlooked by this Court. As claimed by the defendants themselves the suit property was jointly owned by one Bikram Singh and Balwinder Kaur in

equal shares. The said Bikram Singh has expired on 09.04.2012, as per the pleaded case of the defendant. The photocopy of the sale deed has been placed on record which clearly proves the ownership of Balwinder Kaur and Bikram Singh in equal shares. The deceased Bikram Singh was the real son of the plaintiff No.1. Thus, as per Hindu Succession Act, the plaintiff being the mother of deceased Bikram Singh is class-I legal heir and entitled to a share qua the ownership of Bikram Singh in the suit property along with other heirs. Thus on demise of Bikram Singh, the plaintiff No.1 had also become co-sharer in the half share of deceased Bikram Singh. As such, except in due course of law she could not have been dispossessed from the suit property. She is also entitled to possession of the suit property to the extent of her share.

6. Even otherwise, the Court, in the given circumstances, cannot remain a mute spectator to the high headedness of the defendants in throwing the plaintiffs out of the suit property despite there being an injunction order in their favour by learned predecessor of this Court.

7. Thus, keeping in view of the entire facts and circumstances of the case, the application is allowed. The defendants are directed to restore the possession of the plaintiffs in at least one bed room, washroom and kitchen within period of 7 days failing which the plaintiffs can approach the SHO, P.S. Division No.7, who will ensure the compliance of the order of this Court. Further, SHO, P.S. Division No.7, Jalandhar is directed to personally ensure the compliance of this order, if approached by plaintiffs. The applications stands disposed of in above terms.”

4. Being well reasoned, no interference is warranted in the above interim order/arrangement amongst the family members. However, having gone through the positive averments pleaded in the plaint, relief seems to have been sought on the basis of right of plaintiff no.1 qua title of the suit property. The plaint is totally silent with regard to the right of plaintiff No.2 to seek any relief and/or injunction. In the premise, in the larger interest of family peace and tranquility, given the alleged antecedents of plaintiff no.2, as well as, in order to maintain balance of equity between the parties, the impugned order is modified to the extent that plaintiff No.2 shall only have right to visit plaintiff No.1 and not to reside in the suit property during pendency of the trial before the Court below. Needless to say, this interim

shall proceed with the trial without being influenced by the observations made by this court.

5. It is also made clear that any observations and/or ad interim findings rendered by the trial Court vide impugned order dated 03.01.2022 shall be deemed to be only for the purposes of grant of interim relief and the same shall be subject to the final outcome of the civil suit.

6. Issuing of the notice is dispensed with liberty to respondents to approach this court, if aggrieved. Disposed of accordingly.

(ARUN MONGA)
JUDGE

February 1, 2022
vandana

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No