

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

CR-2930-2019 (O&M)
Decided on : 19.07.2022

Angrez Devi

..... Petitioner

Versus

Kushal Pal Singh

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sudhanshu Makkar, Advocate
for the petitioner.

Mr. Sunil Panwar, Advocate
for the respondent.

Manjari Nehru Kaul, J.(Oral)

CM-6913-CII-2022

Application is allowed as prayed and documents (Annexures R-1 to R-11) are taken on record subject to all just exceptions.

Main case

Plaintiff-petitioner has filed a suit for permanent injunction to restrain her son i.e. defendant from interfering in the possession and management of suit properties and also from collecting any rent or letting out any of the properties as detailed in the head of the plaint. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff has pleaded in her plaint that her late husband Chattar Pal Singh, who died on 31.03.2006 had left behind a registered Will as per which his entire estate would remain under the management of the plaintiff during her lifetime and thereafter devolve upon her two sons i.e.

defendant - Kushal Pal Singh and Ravinder Pal Singh. During his lifetime, her late husband Chattar Pal Singh had raised a construction on the eastern side of land bearing killa No.80//1 and 10, where the defendant had set up a factory. It has been further alleged that since the defendant had started troubling the plaintiff and interfering in the management of the suit property, she filed the suit in question and an application under Order 39 Rule 1 and 2 CPC seeking ad interim injunction against him.

In his written statement, defendant did not deny the execution of the registered Will by Chattar Pal Singh, however, he submitted that his mother i.e. plaintiff had acquired only limited rights to the estate of his father and as per the Will, after her death, both he and his brother Ravinder Pal Singh were to acquire absolute ownership in equal shares of the suit property. It was also submitted that it was a matter of record that late Chattar Pal Singh had executed a lease deed for a period of 20 years vide registered lease deed dated 22.09.2005 in favour of the defendant and another lease deed dated 31.08.1999 qua a constructed portion measuring 440 sq. yards, for a period of 15 years. He further submitted that he had set up a factory after raising construction in the area measuring 1900 sq. yards in Killa Nos.80//1 and 10 during the life time and with the consent of his father late Chattar Pal Singh. He further submitted that a written family settlement had also been effected vide affidavit dated 08.06.2007 between his mother i.e. plaintiff, his brother Ravinder Pal Singh and himself to the effect that all three of them would acquire 1/3rd share each in agricultural land measuring 155 kanals 2 marlas. It was still further submitted that his brother Ravinder Pal Singh had given 4 acres of land out of his share to the

defendant on lease on 04.03.2011 against consideration amount of Rs.1,55,000/-. Qua residential house bearing Kothi No.69 situated in Vijay Nagar, Bhiwani, it was submitted that even in respect thereof a settlement was arrived at vide writing dated 15.03.2010 and he had been in the continuous possession of a portion of the said house. Not only had he been in possession but had also reconstructed the portion of the house, which was in his possession after spending Rs.15 lakhs. It was further submitted that the plaintiff herself executed an affidavit dated 10.11.2014 and relinquished her rights in the agricultural land measuring 155 kanals in favour of both her sons.

In her replication, the plaintiff refuted the submissions made by the defendant in the written statement and alleged that the transactions were a result of manipulations and after exercising undue influence over her. She categorically denied any family settlement having taken place between her and her sons including the defendant.

Trial Court while allowing the application under Order 39 Rule 1 and 2 CPC filed by the plaintiff restrained the defendant from interfering in the peaceful possession of the management of the suit properties and from collecting any rent or letting out the properties in any manner whatsoever, except the factory and its premises or any other property, which were executed vide registered lease deeds dated 22.09.2005 and 31.08.1999 by late Chattar Pal Singh i.e. husband of the plaintiff and father of the defendant.

The appeal preferred before the First Appellate Court by the defendant was accepted after taking into consideration the written family

settlement arrived at between the parties.

Learned counsel for the plaintiff-petitioner has vehemently argued that the Lower Appellate Court failed to appreciate that in view of the contents of the registered Will left behind by her late husband Chattar Pal Singh, she was owner in possession and had exclusive rights to reap the benefits out of suit property. He submitted that no doubt the properties were to devolve upon both her sons including the defendant-respondent in equal shares but that was only after her death as she had a pre-existing right of maintenance from the estate of her late husband. Learned counsel submitted that the defendant by his acts and conduct had infringed the Will left behind by late Chattar Pal Singh. Still further, he submitted that the alleged family settlement was a result of undue influence and pressure, hence, not binding.

Per contra learned counsel for the defendant while opposing the prayer and submissions made by counsel for the plaintiff submits that the plaintiff had not approached the Court with clean hands and rather there had been material concealment by her qua the family settlement. He submits that late Chattar Pal Singh was absolute owner of the suit properties and had given life estate to the plaintiff only by way of a Will and hence, there was no question of the plaintiff becoming owner of the suit property under Section 14 of the Succession Act as had been urged by the plaintiff before the Court below. He further submits that after the family settlement had been effected amicably between the plaintiff and both her sons including the defendant, all three had been in possession of their respective shares. Learned counsel vehemently refuted the submissions made by counsel

opposite that the family settlement was a result of undue influence, pressure and manipulations. He reiterated that the plaintiff had concealed the settlements between the parties in her plaint and further submitted that she had been pressurized and instigated by her sons in-law for reasons but obvious, to file the suit in question.

Heard learned counsel and perused the impugned orders passed by the Court below.

Following facts have not been disputed by either of the parties:

- (i) that a registered Will was executed by late Chattar Pal Singh in respect of the suit properties qua which he admittedly was an absolute owner.
- (ii) plaintiff was to be owner in possession of the properties left behind by late Chattar Pal Singh and was entitled to use them during her lifetime with a rider that she could not alienate them in any manner.
- (iii) after the death of the plaintiff, both sons of late Chattar Pal Singh i.e. the defendant and Ravinder Pal Singh were to be owners in possession of the properties in equal shares.
- (iv) that during his lifetime, late Chattar Pal Singh executed a lease deed in favour of defendant qua 38 kanlas 7 marla of land and he had been in possession of the same since then.
- (v) another lease deed regarding killa No.80//1 and 10 was also executed by late Chattar Pal Singh in favour of the

defendant in the year 2000 where defendant had set up a factory and had been running it ever since then.

The question, which arises for consideration of this Court is as to whether the family settlement arrived at between the plaintiff and her two sons qua the properties left behind by late Chattar Pal Singh was prima facie a result of manipulation and undue influence or not. It needs to be noticed here that the affidavit dated 10.11.2014 not only bears the photographs of the plaintiff but has also been attested by the Executive Magistrate, Bhiwani. The other family settlement qua the house situated in Vijay Nagar, Bhiwani which too was partitioned as per the family settlement and vide which 280 sq. yards came to the share of defendant, has also been signed by the plaintiff. No doubt, the plaintiff claimed that it was a result of manipulation, however, she has not denied her signatures on both these affidavits. Still further, this Court does concur with the submissions made by learned counsel for the defendant-respondent that the plaintiff had cleverly concealed the factum of the family settlements in her plaint and had not approached the Court with clean hands. Once there is concealment of material fact, an inference has to be drawn that the petitioner has attempted to pollute the pure stream of justice and in such circumstances, the petition or the case of the plaintiff deserves to be dismissed without going into its merits. On this ground itself, the plaintiff is not entitled to the discretionary relief of injunction. This Court does not find any error in the order dated 09.04.2019 wherein it set aside the order dated 15.12.2018 passed by the trial Court and dismissed the application under Order 39 Rule 1 and 2 CPC filed by the plaintiff.

As a sequel to above, the present petitioner being devoid of any merits, stands dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the suit.

(MANJARI NEHRU KAUL)
JUDGE

19.07.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No