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

CR-2931-2022 (O&M)

Date of Decision:16.08.2022

Ravinder Singh

.. Petitioner

Vs.

Gaurav and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Gurinder Pal Singh, Advocate for the petitioner.

Mr. K.S. Malik-I, Caveator
for the respondents.

...

Manoj Bajaj, J. (Oral)

Petitioner (plaintiff) has filed this revision petition to challenge the order dated 17.05.2022 (Annexure P-5) passed in CMA/96/2021, by Addl. District Judge, Rohtak, whereby it has partly allowed the petitioner's appeal against the order dated 07.12.2021 (Annexure P-3) passed by Civil Judge (Jr. Divn.), Rohtak, thereby dismissing his application under Order XXXIX Rules 1 and 2 CPC read with Section 151 CPC.

The facts in brief leading to the revision are that the plaintiff filed a suit for declaration with consequential relief of permanent and mandatory injunction against defendants (respondents) and pleaded that his father, namely, Tara Chand s/o Shri Mai Chand, who died on 20.07.1995, was owner in possession of 1/2 share of the agricultural land comprised in khewat No.19, khatoni No.256, Rect..& Killa No.25/11/2/2 (0-9), 19/2 (3-2), 21/2/1 (7-12), 22/1 (7-16), 23/1 (7-16), 30/5/2 (4-0), 6(8-0), 14(7-7), 15(7-7), 16(8-0), 25(8-0), 31/1 (8-0), 2(8-0), 3(8-0), 7/2 (5-6), 8 (8-0), 9 (8-

0), 10(8-0), 11(7-7), 12(7-7), 13(7-7), 14(7-7), 17(8-0), 18(8-0), 19(8-0), 20(8-0), 21(8-0), 22(8-0), 23(8-0), 56/1(8-0), 2(8-0), 3(8-0), 4(8-0), 57/5(8-0), 73/2 (5-19), 3(8-0), 4(3-0), 8(6-2), 73/9(5-5), 12(3-11), 19(8-0), 22(8-3), total kitte 22 total measuring 296 kanals 3 marlas, khatoni No.277, killa No.31/24 (8-0), khatoni No.258, killa No.25/20/1/7-16 total measuring 311 kanals 19 marlas situated within the revenue of village Singhapura Kalan, Tehsil and District Rohtak. His father had executed a registered Will on 02.08.1990, thereby bequeathing all his moveable and immovable properties in favour of his sons i.e. Ravinder Singh (plaintiff) and Atul Kumar (now deceased). The plaintiff was serving outside the village, who had requested his brother to get the mutation sanctioned on the basis of the Will and believed that the same was sanctioned, as both the brothers continued to enjoy the property left behind by their father to the extent of half share each.

Plaintiff's brother Atul Kumar had died on 09.11.2020 and his half share in the suit property devolved upon his three children and widow (defendants No.1 to 4) to the extent of 1/8th share each. Later, the plaintiff returned back, and came to learn that his brother Atul Kumar had got the mutation of the suit property sanctioned in favour of all the legal heirs of Tara Chand, including his widow Swaroopvati (deceased), both the sons and his daughters (defendants No.5 and 6) in equal shares, whereas the same was to be done in accordance with the Will. The mother of the plaintiff, namely, Swaroopvati further alienated her 1/5th share in favour of defendant No.1 Gaurav s/o Atul Kumar and in this regard, mutation No.1515 was also sanctioned on 24.09.2015. According to the plaintiff, his brother Atul Kumar played fraud upon him and dishonestly got the land mutated in favour of all the legal heirs of Tara Chand, and prayed for a decree for

declaration on the strength of the Will to claim half share in the suit property and also challenged the mutation etc. Further, as a consequential relief, decree for permanent injunction as well as mandatory injunction was also prayed.

Along with the suit, an application under Order XXXIX Rules 1 and 2 CPC read with Section 151 CPC was also filed for ad interim injunction.

The suit was contested by defendants No.1 to 4 and 6 by filing joint written statement, wherein various preliminary objections relating to the maintainability of suit, concealment of material facts, delay and laches etc. were raised, and on merits, it is pleaded that the Will is result of fraud and impersonation and plaintiff wants to grab the property left behind by their father Tara Chand. While denying the other averments in the plaint, it was pleaded that the mutation under challenge has been sanctioned in accordance with law, and prayed that the suit be dismissed.

The application for ad interim injunction was also contested by filing separate reply. The trial Court upon considering the pleadings, and material on record dismissed the application of the plaintiff vide order dated 07.12.2021.

Dissatisfied with the order dated 07.12.2021 passed by the Civil Judge (Jr. Divn.), Rohtak, plaintiff preferred miscellaneous appeal before Addl. District Judge, Rohtak and the same was partly allowed, by directing the defendants to place on record the particulars of proposed vendees, in case they intend to alienate the property.

Learned counsel for the petitioner has argued that the application was dismissed by the trial Court only on the ground that the

plaintiff and defendants are co-sharers in the suit property, therefore, the plaintiff cannot seek injunction against them, but the Appellate Court proceeded to partly allow the appeal to avoid multiplicity of litigation and directed the defendants to provide details of purchasers, in the event of alienation of the suit property during the pendency of the suit. He submits that all the objections raised by the defendants relating to delay etc. are all matters of evidence and the plaintiff/petitioner has propounded a Will executed by his father bequeathing all the properties in equal shares upon both the sons, and the properties continue to be in joint possession between the plaintiff and legal heirs of his brother. He submits that the plaintiff is not seeking any injunction that the defendants be restrained from interfering in the suit property, but his prayer is only to the extent that he be not dispossessed by defendants on the basis of the mutation. According to him, both the parties are in possession of the suit property, therefore, if status quo regarding possession is ordered, no prejudice would be caused to the other side. He prays that the revision petition be allowed.

The prayer is opposed by learned counsel for the respondents, who have argued that the order passed by the Appellate Court is justified and does not warrant any interference, as admittedly the parties are co-sharers in the suit property and the issues, particularly the Will propounded by plaintiff is yet to be established, therefore, he has no *prima facie* case in his favour. He submits that the balance of convenience also lies in favour of the defendants and in case injunction application filed by the plaintiff is also allowed, it would result in irreparable loss to the defendants. It is prayed that the petition be dismissed.

After hearing the learned counsel for the parties and

considering the material on record, this Court finds that as far as the status of both the parties relating to the suit property is concerned, both the Courts have held the parties to be co-sharers and have observed that the plaintiff cannot seek injunction against the defendants. The plaintiff has claimed that on the basis of mutation, the defendants are bent upon to dispossess him, whereas the defendants have set up a claim that the suit property is not partitioned so far, therefore, each and every co-sharer is in possession of the entire suit property.

Thus, considering the facts and circumstances of this case, it becomes clear that the material issues relating to the controversy between the parties can only be effectively decided on the basis of the evidence, which is yet to be adduced, but as both the parties are in possession of the suit property being co-sharers, no specific injunction can be granted in favour of either of the parties. Consequently, in addition to the direction already issued by the Appellate Court, it is directed that the parties shall maintain status quo regarding possession also. The order shall not have any bearing on the merits of the civil suit.

With the above observations, the revision petition is disposed of.

16.08.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No