

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

**CR No.3581 of 2022**

Date of decision: 1<sup>st</sup> September, 2022

Pooja @ Pooja Swain & another

... Petitioners

Versus

Simmi Sharma & another

... Respondents

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Harinder S. Aujla, Advocate for the petitioners.

**MANJARI NEHRU KAUL, J.**

The instant petition has been filed for setting aside of the impugned order dated 28.07.2022 (Annexure P1) passed by the learned Additional District Judge, Karnal vide which the application filed by the petitioners under Order I Rule 10 CPC was dismissed at the appellate stage.

Learned counsel for the petitioners submits that the impugned order has been passed without appreciating the real controversy between the parties and hence, it deserves to be set aside. He contends that the respondents herein, who are respondent and appellant respectively in Civil Appeal No.CA/54/2017, have no right over the suit property as the same was bequeathed in their favour by their late grandfather Devender Nath Sharma vide Will dated 12.11.2007. It has been contended that since the petitioners are in

possession of the suit property and the respondents are illegally trying to dispose of the suit property, the petitioners filed a civil suit for declaration and permanent injunction against the respondents on the basis of Will dated 12.11.2007; which is still pending adjudication. He has vehemently argued that the petitioners are absolute owners in possession of the suit property, therefore, they being necessary parties, have to be impleaded in the civil appeal in question for its proper and effective disposal, failing which they would suffer irreparable loss and injury.

I have heard learned counsel for the petitioners and perused the relevant material on record.

Respondent No.1, who is the paternal aunt of the petitioners, filed a suit for mandatory injunction against respondent No.2 (mother of the petitioners) for vacating the suit property, which was decreed vide judgment and decree dated 22.12.2016. Respondent No.2 impugned the aforementioned judgment and decree before the learned appellate Court. During the pendency of the appeal before the lower appellate Court, the petitioners filed an application under Order I Rule 10 CPC for being impleaded as parties.

The petitioners are claiming to be owners in possession of the suit property by virtue of a Will dated 12.11.2007. However, in the suit in question, neither declaration qua ownership of the suit property was claimed nor was there any challenge made to the Will dated 12.11.2007. Rather, the suit instituted by respondent No.1 against

respondent No.2 was for mandatory injunction and vacating the suit property. The respondent No.1 in her suit did not claim any relief qua the petitioners and the judgment and decree dated 22.12.2016 passed by the trial Court, in any case, would not be binding on the petitioners.

As far as the question of ownership of the petitioners is concerned, they have already instituted a civil suit for declaration and permanent injunction on the basis of a Will alleged to have been executed by late Devender Nath Sharma on 12.11.2007 qua the suit property and admittedly it is still pending. Hence, the rights of the petitioners, if any, in the suit property would be duly adjudicated upon in accordance with law in that suit. The Lower Appellate Court cannot be expected to delve into and undertake an inquiry qua the same in the appeal pending before it.

As a sequel to the above discussion, this Court does not find any force in the submissions made by the learned counsel that the presence of the petitioners would be necessary in the appeal in question, for its effective disposal. Accordingly, the revision petition being bereft of any merit stands dismissed.

**(MANJARI NEHRU KAUL)**  
**JUDGE**

**September 1, 2022**  
*rps*

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No