

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

-:-

CR-4207-2022 (O&M)

Date of Decision : 18.10.2022

Surmukh Singh and Another

...Petitioners

versus

Surinder Kaur and Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. N.S. Swaitch, Advocate for the petitioners.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 26.11.2021 vide which the appeal of the defendant-petitioners for setting aside the impugned order dated 24.02.2016 passed by the Trial Court in Civil Suit No.165/30-09-2014 has been dismissed. The Trial Court vide order dated 24.02.2016 had allowed the application for temporary injunction. Aggrieved by the said order an appeal was preferred by the defendant-petitioners which was dismissed vide order dated 26.11.2021. Hence, the present revision petition.

The brief facts relevant to the present lis are that Surinder Kaur and Paramjit Kaur, plaintiff-respondent Nos.1 and 2, had filed a suit for declaration that they are owners to the extent of 2/5th share of land measuring 79 kanals 3 marlas as per jamabandi for the year 2009-2010 situated at village Billon, H.B No.70, Tehsil Samrala, District Ludhiana and for declaration that the mutation No.2120 dated 06.05.2013 entered and sanctioned on the basis of the alleged Will of Nachhattar Singh and mutation No.2139 dated 22.08.2014

are illegal, null and void and further for permanent injunction restraining the defendants from alienating the suit property.

Along with the said suit an application under Order 39 Rules 1 and 2 CPC was filed for temporary injunction. It was averred in the suit that the father of the plaintiff-respondents and defendant Nos.1 and 2 and father-in-law of defendant No.3 was owner of the suit land who had died about two and a half years ago and that the defendants had illegally got sanctioned mutation No.2120 dated 06.05.2013 in their favour on basis of the some Will.

On notice, defendant Nos.1 and 2 filed their written statement. A separate written statement was filed by the defendant-petitioners. It was the stand taken by the defendant-petitioners and defendant Nos.1 and 2 that the mutations had been rightly sanctioned.

The plaintiff-respondent Nos.1 and 2 have claimed their rights on the basis of natural succession whereas the defendant-petitioners and defendant Nos.1 and 2 are staking their claim on the basis of a Will dated 13.12.2012. It is an admitted position that defendant Nos.1 and 2 have conceded the claim of the plaintiff-respondent Nos.1 and 2 that Will dated 13.12.2012 is illegal. The validity of the Will has only been asserted by the defendant-petitioners. Both the Courts below, on the basis of the pleadings of the parties, have rightly come to the conclusion that a prima facie case is made out and balance of convenience lies in favour of the plaintiff-respondent Nos.1 and 2.

Learned counsel for the defendant-petitioners has contended that initially in the written statement filed by the defendant Nos.1 and 2 they had supported the Will dated 13.12.2012. However, subsequently the claim of

the plaintiffs-respondent Nos.1 and 2 was conceded in connivance. It is further the contention that at the time of sanctioning of the mutation both the plaintiff-respondent Nos.1 and 2 had given their no-objection.

Prima facie the plaintiffs-respondent Nos.1 and 2 have been able to make out a case for grant of temporary injunction. There is nothing on the record, at this stage, to show any connivance between the parties. The arguments raised by the learned counsel that no prima facie case is made out for grant of injunction in view of the no-objection given by the plaintiff-respondent Nos.1 and 2 before the revenue authorities cannot be accepted inasmuch as the veracity of the affidavits Annexure P-7 would be gone into once evidence is led. The only restraint order which has been passed by the Courts below is that the defendants would not alienate the suit property, which is essential for preserving the suit property.

In view of the above, I do not find any illegality or infirmity in the orders passed by the Courts below. Accordingly, the revision petition is dismissed. Pending applications, if any, also stand disposed off.

October 18, 2022
tripti

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO