

114 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4405-2022 (O&M)

Date of decision : 15.11.2022

Surjeet Singh and others

...Petitioners

Vs.

Renu

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Deepak Girotra, Advocate for the petitioners.

MANOJ BAJAJ, J.

CM-15080-CII-2022

Application is allowed as prayed for.

Annexures P-11 and P-12 are taken on record.

Main case

Petitioners (plaintiffs) have filed this revision petition to challenge the order dated 14.09.2022, whereby the appellate Court allowed the appeal filed by the respondent/defendant against order dated 29.11.2021 passed by Civil Judge (Jr. Division), Rohtak accepting their application under Order 39 Rules 1 and 2 CPC.

Learned counsel for the petitioners/plaintiff has argued that the trial Court had carefully examined the pleadings of the parties while allowing the application under Order 39 Rules 1 and 2 CPC in favour of the petitioners vide order dated 29.11.2021, but the appellate Court has erroneously reversed the said decision and dismissed the application for ad interim injunction. Learned counsel submits that the suit for permanent injunction filed by the plaintiffs is directed against his wife and children, who had left the home on 12.08.2021 and the appellate Court has proceeded to dismiss the application by

accepting the appeal filed by the defendant on the ground that the plaintiffs have not disclosed the fact of filing of the petitions by wife under Section 125 Cr.P.C and under Section 12 The Protection of Women from Domestic Violence Act, 2005. According to the learned counsel, the suit was filed on 02.11.2021, whereas the petition under Section 125 Cr.P.C was filed subsequently on 16.11.2021, therefore, there was no occasion for the plaintiffs to mention the filing of this petition in the plaint. Similarly, he submits that though the other petition by wife was filed on 24.09.2021 i.e prior to the filing of the suit, but notice of the said petition was issued pursuant to the order dated 12.04.2022 passed by Judicial Magistrate First Class, Rohtak as previously no notice of the petition was issued for different reasons, therefore, it is clear that the petitioner was not even aware of the filing of this petition. He submits that the property in question is owned by the petitioner and his children, born from the first wedlock in equal shares, as the share of his deceased first wife was inherited by the co-plaintiffs. He submits that in the suit property, the defendant (second wife) has no right, title or interest. He prays that the impugned order be set aside.

During the course of hearing, learned counsel has not disputed this fact that the defendant (second wife) is also having two daughters from her first marriage, and after the second marriage, the couple, along with their children, resided together in the suit property.

After hearing the learned counsel and considering the above background, this Court finds that as per the averments made by wife in her petition under Section 12 The Protection of Women from Domestic Violence Act, 2005, she, along with her daughters, was forcibly turned out of the house

by her husband, wherein report of Protection Officer has also been called for. Admittedly, the claim by defendant wife in the said petition also includes her right to reside in the suit property. The ground raised by the husband that the wife voluntarily left the suit property is a fact which requires evidence and if the case of the plaintiff is tested on the three cardinal principles, which govern the exercise of discretion under Order 39 Rules 1 and 2 C.P.C., this Court finds that the plaintiff has no *prima facie* case in his favour as the marriage between the parties is still subsisting. Even if, assumably the grounds raised in this revision relating to the reasoning by the appellate Court that the plaintiff failed to disclose the litigation initiated by defendant-wife is accepted, the same is irrelevant.

Thus, this Court has no hesitation in holding that the conclusion drawn by the appellate Court in rejecting the plaintiff’s application under Order 39 Rules 1 and 2 CPC warrants no interference by this Court as the impugned order does not suffer from any illegality or impropriety.

Resultantly, the petition is dismissed.

(MANOJ BAJAJ)
JUDGE

15.11.2022
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No