

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

CR-5125-2022

Date of decision:-14.11.2022

Harkimat Singh

...Petitioner

Versus

Simranjit Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sunil Agnihotri, Advocate
for the petitioner.

H.S. MADAAN, J.(ORAL)

1. Revisionist – Harkimat Singh, who is plaintiff in the civil suit filed by him against his son Simranjit Singh pending in the Court of Civil Judge (Jr.Divn.), Samrala has approached this Court by way of filing the instant revision petition seeking issuance of a direction to the trial Court to decide the stay application filed by him along with the suit.

2. Briefly stated, facts of the case are that plaintiff Harkimat Singh has filed a suit against his son Simranjit Singh seeking declaration that transfer deed dated 25.3.2008 executed by him in favour of his son Simranjit Singh, defendant, transferring 1/2 share of land measuring 23 kanals 9 marlas situated at village Harion Khurd, Tehsil Samrala, District Ludhiana, is null and void being result of fraud and misrepresentation played by defendant upon him and further seeking a decree for permanent injunction restraining defendant or persons claiming under him from

transferring/alienating the said land in any manner.

3. As per the interim orders made available by the revisionist on the record, the suit and application for temporary injunction were received by entrustment in the Court of CJ(Jr.Divn.), Samrala on 19.5.2022. He after hearing learned counsel for the plaintiff observed that no ground was made out to grant ex-parte injunction and it was appropriate to hear the opposite party first, therefore, notice of the suit as well as the stay application was issued to the defendant for 8.7.2022; the plaintiff had filed an application for preponing the date of hearing, accordingly the date of hearing was preponed to 23.5.2022 and notice was ordered to be issued to the defendant for 31.5.2022. However, on that date, notice issued to defendant was received back unserved and fresh notice was ordered to be issued to defendant for 15.7.2022 and that date was given considering the impending summer vacations; on 15.7.2022, the Presiding Officer was not there since he had tested Covid positive and the case was adjourned to 20.9.2022 by Civil Judge on duty; on 20.9.2022, notice sent for the service was received back with the report of 'refusal' and after recording satisfaction, the trial Judge directed that notice to the defendant be issued through process of munadi and affixation for 24.11.2022.

4. After hearing learned counsel for the revisionist and going through the interim orders made available on the record, I find that the trial Court cannot be blamed for unnecessary prolonging the matter. Ad interim injunction dealt with by Order 39 Rules 1 & 2 CPC is a discretionary equitable relief, which is to be granted by the Court keeping in view all the facts and circumstances including the conduct of the

parties, if the necessary ingredients for grant thereof are fulfilled, to say the plaintiff having a good prima facie case, balance of convenience being in favour of the plaintiff and plaintiff suffering irreparable loss and injury in case of denial of ad interim injunction. Therefore, the injunction is to be granted considering all those factors and not in routine. Order 39 Rule 3 CPC provides that the Court shall in all case, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party and as per provision where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay.

5. Here in this case the Court while taking up the case for the first time on 19.5.2022 has categorically recorded that no ground was made out to grant ex-parte injunction and it was deemed appropriate to hear the opposite party first. The service of defendant is yet to be effected. The dates given by the trial Court for such purpose cannot be said to be long and on finding report of 'refusal' by the defendant, the trial Court has ordered his service by munadi and affixation. No error can be found with such approach of the trial Court. The apprehension of the revisionist is that the defendant may make alienation qua the suit land well before the next date of hearing. Even if it so happens, the rights of the plaintiff would be adequately protected by applying the principle of *lis pendens* since any alienation made by the defendant during the pendency of the suit would be subject to decision of the civil suit. Therefore, under the

circumstances, no direction is required to be given to the trial Court as sought by the revisionist by way of filing the present revision petition.

6. Thus, finding no merit in the civil revision petition, the same stands dismissed.

14.11.2022

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(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**