

111

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-5911-2022

DATE OF ORDER: 14.12.2022

Neha

.....Petitioner

Vs.

Sanjeev Kumar and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. Pawan Attri, Advocate for the petitioner.

Nidhi Gupta, J.

Present Revision Petition has been filed seeking setting aside of the impugned order dated 23.11.2022 passed by the learned Additional District Judge, Kurukshetra whereby the appeal of the petitioner against order dated 09.09.2022 passed by learned Court of Civil Judge (Junior Division), Shahbad, Kurukshetra vide which application of the petitioner under Order 39 Rules 1 & 2 read with Section 151 CPC had been dismissed.

Brief facts of the case are that the petitioner-plaintiff claims to be the owner in possession as co-sharer in suit land as detailed in the Headnote of the plaint, and respondents No.1 and 3 herein/defendants No.1 and 3 are brothers of the plaintiff while respondent No.2/defendant No.2 is wife of respondent No.1/defendant No.1. Vide transfer deed

No.1640/1 dated 25.10.2017, the petitioner transferred immovable property

regarding the suit land in favour of respondent No.1. It is the pleaded case of the petitioner that the said transfer deed is forged and fabricated and its mutation and all other revenue record based on the same in favour of respondent No.1 qua the suit land are illegal. It is in this circumstance that the petitioner filed the suit for declaration with consequential relief of permanent injunction qua the suit land; wherein the present application under Order 39 Rules 1 & 2 read with Section 151 CPC was filed to prevent the respondents from selling the suit land in favour of strangers during the pendency of the case.

Respondents-defendants have denied the aforesaid assertions of forgery and fabrication made by the petitioner and have inter alia stated that the transfer deed of the suit land vide deed No.1640/1 dated 25.10.2017 in favour of respondent No.1 was executed and registered by the petitioner of her own free will and consent. It is further denied that the petitioner is owner in possession of the suit property. It has further been pleaded on their behalf before the Courts below that the respondent No.1 being owner of the suit property has further transferred the same in favour of respondent No.2 vide deed No.2830/1 dated 12.03.2018, which fact is within the knowledge of the petitioner.

In view of the above facts, the petitioner's application was dismissed by the learned Civil Judge (Junior Division), Shahbad, Kurukshetra vide order dated 09.09.2022; and the appeal thereagainst has also been dismissed vide impugned order dated 23.11.2022.

Ld. Counsel for the petitioner states that it is imperative that the suit land be not transferred during the pendency of the Suit, as respondent No. 1 has got title thereto on the basis of forged and fabricated transfer deed which was never executed by the petitioner. It is further submitted that the suit property which is transferred vide the transfer deed was not free from encumbrances inasmuch as it was mortgaged with the State Bank of India at the relevant time.

I have heard Id. Counsel for the petitioner.

A few facts/dates that are seen from the record of the case are as follows: a) that father and mother of the petitioner expired in the year 2002 and 2014 respectively; b) that the impugned transfer deed was executed by the petitioner in favour of respondent No.1 on 25.10.2017; c) that the petitioner was married at the expense of respondent No.1 on 04.12.2017; d) that admittedly at present the suit property is recorded in the name of respondent No.2 in pursuance to the above mentioned transfer deed dated 12.03.2018 executed by respondent No. 1; and e) that the petitioner filed the Civil Suit assailing the aforesaid transfer deed of 09.07.2020.

In my considered view, it is clear from the above dates that the petitioner has filed the civil suit only on 9.7.2020 which is almost 3 years after she is alleged to have executed the transfer deed on 25.10.2017. Admittedly, in the interregnum, respondent No. 1 has already transferred the suit land in name of respondent No. 2 on 12.3.2018. Admittedly, the transfer deed dated 25.10.2017 is a registered document. As such, in my

view, the veracity thereof will have to be proven during the course of the trial and a prima facie presumption of genuineness has to be accorded to the same.

As regards, second submission of the Learned counsel for the petitioner that suit land is not free from encumbrances, learned counsel is unable to dispute the fact on record that the suit land was got redeemed by respondent No.1 after clearing its outstanding dues on 30.10.2017.

No other argument has been raised on behalf of petitioner.

In view of the foregoing discussion, I find no ground to interfere in the orders impugned herein and therefore, the present Revision Petition stands dismissed.

14.12.2022
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No