

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6048 of 2022

Date of Decision: 20.12.2022

Nishan Singh and Others

... Petitioner(s)

Versus

Gulwinder Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sharad Mehra, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

1. While deciding the miscellaneous appeal against the order passed by the trial Court directing the parties to maintain the *status quo*, the First Appellate Court has found that the plaintiffs did not come to the Court with clean hands and they have failed to prove that they have become owners in possession of the property by virtue of any sale deed. This revision has been filed challenging the correctness of the aforesaid order.

2. Originally, the suit property was owned and possessed by late Sh.Kartar Singh. He had left behind his three sons and two daughters. However, one son and two daughters have got the property entered in their names while excluding the other two sons. Subsequently, this fact came to the notice of the other two sons who were omitted from the list of heirs in the record. In the meantime, one son and two daughters of late Sh.Kartar Singh have transferred the property in favour of the plaintiffs. Admittedly, the plaintiffs purchased the undivided share in the joint khata. Hence, the

remedy available with them is to file a suit for partition while establishing their right. The two sons of late Sh.Kartar Singh continue to be in possession of the property. The First Appellate Court has found that the plaintiffs have failed to make out a *prima facie* case in their favour for grant of temporary injunction.

3. Heard the learned counsel representing the petitioners at length and with his able assistance, perused the paper-book.

4. The learned counsel representing the petitioners contends that the First Appellate Court has returned the findings on merits without granting an opportunity to the petitioners to lead evidence. He submits that in such circumstances, the trial Court had correctly ordered the parties to maintain the *status quo*.

5. The observations made by the First Appellate Court while deciding a miscellaneous appeal against an interlocutory order are only a *prima facie* conclusion drawn by the Court on the basis of the material placed before it. Such observations cannot be treated as expression of final opinion on the merits of the case. However, while deciding an application for grant of temporary injunction, the Court is required to examine the matter on three tests laid down by the Courts, namely (i) Whether a *prima facie* case in favour of the plaintiffs is established? (ii) The balance of convenience lies in the favour which party and (iii) Whether the plaintiff will suffer an irreparable loss and injury if injunction is not granted? Further, the Court can also take into consideration the conduct of the plaintiff. After examining the case on the aforesaid parameters, the Court records its conclusion while making certain *prima facie* observations

undivided share in the joint property. There is no evidence, except a recital in the sale deed, with regard to the delivery of possession. There is also no material to conclude that Sh.Satnam Singh and Sh.Kabul Singh, the two sons of late Sh.Kartar Singh were ever dispossessed from the property which they have inherited.

7. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned order. Hence, the present revision petition is dismissed.

(Anil Kshetarpal)
Judge

December 20, 2022

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No