

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

**CR-2800-2023 (O&M)
Date of decision:05.05.2023**

KUNAL BAJAJ AND ANOTHER ...Petitioners
VS
RASHMI DEVI AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Vishal Munjal, Advocate,
For the petitioners.

ARUN MONGA, J. (ORAL)

Revision petition is directed against order dated 02.12.2019 (Annexure P-6) passed by learned Additional District Judge, Pathankot whereby application under Order 39 Rule 1 and 2 read with Section 151CPC filed by respondent No.1/plaintiff was partly allowed and petitioners/defendants No.1 and 2 were restrained from alienating the suit property, while setting aside order dated 07.03.2019 (Annexure P-5) passed by learned Civil Judge (Junior Division), Pathankot, whereby the injunction application filed by plaintiff/respondent No.1 was dismissed.

2. Succinct facts first.

2.1. Respondent No.1 is real sister of petitioner No.1, sister-in-law of petitioner No.2 and daughter of respondent No.2.

2.2. Respondent No.1/plaintiff filed a suit (Annexure P-1) for declaration to the effect that plaintiff is owner in possession of shop at Mission Road, Pathankot, Godown, residential house, Kothi, plots, shop and vehicle (Innova). Petitioners filed a written statement (Annexure P-2).

Thereafter, respondent No.1/plaintiff filed an amended plaint (Annexure

P-3). Respondent No.1 along with suit for declaration and permanent injunction filed an application under Order 39 Rule 1 and 2 read with Section 151 CPC. The said application was dismissed by learned Civil Judge (Junior Division) Pathankot vide order dated 07.03.2019 (Annexure P-5). Aggrieved, respondent No.1 filed an appeal, which was partly allowed and petitioners were restrained from alienating the suit property vide impugned order dated 02.12.2019 (Annexure P-6).

3. Learned counsel for petitioners submits that plaintiff/respondent No.1 has concealed the fact that properties in dispute had been purchased by petitioner/defendant No.2 Pallavi vide different sale deeds and as such, these properties were never owned by late Sh. Vijay Kumar Bajaj. He would further argue that learned First Appellate Court erred in restraining petitioners from alienating the entire suit property which is not the part and parcel of the properties vested with deceased Vijay Kumar Bajaj.

4. I have heard learned counsel for petitioner and gone through the case file.

5. Order assailed herein is premised *inter alia* on the following reasoning:

“From the submission of learned counsel for the parties and from perusal of the file, it is clear that Rashmi Devi filed a suit against Kunal Bajaj and others for declaration claiming that Vijay Kumar father of the plaintiff and who was owner of the property. He never executed any Will in favour of the defendants. On the other hand the case of the respondents/defendants is that Vijay Kumar executed a valid Will in favour of the defendants and plaintiff was having knowledge of the said Will. One party is denying the Will whereas the other party alleged the execution of the Will. The evidence is yet to be recorded to prove or disprove the Will. In such a situation the property must be kept preserved and protected. If defendants succeed to alienate the property, the appellant/plaintiff will suffer irreparable loss. Therefore, the

appeal is partly allowed and defendants are restrained from alienating the suit property. With these observations and the findings, the appeal is partly allowed. However, it is made clear that this order shall have no bearing upon the final decision of the suit on merits.”

6. There is no room for interference in the aforesaid valid reasons recorded by learned First Appellate Court.

7. No material irregularity in law or procedure has been committed by learned Appellate Court, so as to exercise extraordinary revisional jurisdiction herein.

8. I am not inclined to interfere in the impugned order dated 02.12.2019 (Annexure P-6), since during pendency of the trial, there are rival claims on the suit property arising out of succession of the common predecessor-in-interest of the parties.

8.1. However, given that dispute is between real brother and sister, it would be appreciated that they make an endeavour to amicably settle the matter through mediation proceedings. To that limited extent, notice be issued to respondent No.1/plaintiff and parties to appear before the Mediation and Conciliation Centre in Pathankot itself to explore the possibility of an amicable settlement.

8.2. Needless to add, in case there is favourable outcome, the same be sent to learned trial Court.

9. Revision petition is disposed of with the above directions.

(ARUN MONGA)
JUDGE

05.05.2023
vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No