

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3681-2023 (O&M)
Reserved on: 07.07.2023
Date of decision: 19.09.2023

VISHAL

..Petitioner

Versus

RAJ KUMAR AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Govind Goel, Advocate
and Mr. Amit Kashyap, Advocate
for the petitioner.

ANIL KSHETARPAL, J(Oral)

1. Through this revision petition, the petitioner (plaintiff) prays for setting aside the order passed by the First Appellate Court on 26.05.2023 while accepting the miscellaneous appeal filed against interlocutory order passed by the trial Court granting injunction in his favour and against defendant No.1.
2. The relevant facts, in brief, are required to be analyzed before adjudicating the dispute involved.
3. The petitioner is the son of respondent No.1 (defendant No.1). He has filed a suit for the grant of decree of declaration that he is a co-sharer in possession being a coparcener of the suit property. The entire basis of his suit is that the suit property is a coparcenary property and therefore, he is the owner by virtue of being a coparcener by birth.
4. On the other hand, the defendant No.1 while contesting the suit disputes this fact. It is submitted that the petitioner is not his own son and

this was the reason why a decree for divorce was granted between defendant No.1 and Smt. Usha Rani, the mother of the petitioner on 14.08.1991.

5. During the pendency of the suit, an application for grant of temporary injunction restraining the defendant No.1 from alienating the suit property was allowed, however, the First Appellate Court on reappreciation of material and the law has held that the plaintiff cannot restrain the *karta* (his father) to alienate the property.

6. In fact, this issue was examined in detail by the Hon'ble Supreme Court in **Sunil Kumar Vs. Ram Parkash, 1988 (2) SCC 72**, in the following manner:-

“At the outset it is to be noticed that in a suit for permanent injunction under section 38 of the Specific Relief Act by a coparcener against the father or Manager of the Joint Hindu family property, an injunction cannot be granted as the coparcener has got equally efficacious remedy to get the sale set aside and recover possession of the property. Sub-Section (h) of Section 38 Specific Relief Act bars the grant of such an injunction in the suit. Secondly, the plaintiff respondents brought this suit for permanent injunction restraining their father, the defendant No. 1, from selling or alienating the property to the defendant No. 2 or any other person and also restraining the defendant No. 2 from proceeding with the suit for specific performance of the agreement to sell pending in the civil court. Thus the relief sought for is to restrain by permanent injunction the Karta of the Joint Hindu Mitakshara Family, i.e. defendant No. 1, from selling or alienating the house property in question. The defendant No. 1 as Karta of the joint Hindu family has undoubtedly, the power to alienate the joint family property for legal necessity or for the benefit of the estate as well as for meeting antecedent debts. The grant of such a relief will have the effect of preventing the father permanently from selling or transferring the suit property belonging to the joint Hindu Undivided Family even if there is a genuine legal necessity for such transfer. If such a suit for injunction is held maintainable the effect will be that whenever the father as Karta of the Joint Hindu coparcener property will propose to sell such property owing to a bona fide legal necessity, any coparcener may

come up with such a suit for permanent injunction and the father will not be able to sell the property for legal necessity until and unless that suit is decided.”

7. The correctness of the prima facie conclusion drawn the by the First Appellate Court is being assailed in this revision petition.

8. The learned counsel representing the petitioner has been heard at length. He has made an attempt to distinguish the judgment passed by the Supreme Court in **Sunil Kumar’s case (supra)**.

9. This Court has considered the submissions of the learned counsel representing the petitioner.

10. Apart from the judgment of the Supreme Court, before grant of temporary injunction, the plaintiff is required to satisfy three tests namely:-

- i. Prima facie in his favour;
- ii. Balance of convenience in this favour; and
- iii. Irreparable loss and injury, if the injunction is not granted.

11. It is also evident that defendant No.1 has only sold 16 marla land in the year 2006 by executing two separate sale deeds with respect to 5 marla and 11 marla plots, respectively. Moreover, as held by the Supreme Court, the plaintiff can file a suit to challenge the alienation. In fact, on a careful reading of the judgment passed by the Supreme Court, it is evident that the Court has held that in view of Clause (h) of Section 41 of the Specific Relief Act, 1963, the relief of injunction could not be granted. Moreover, the defendant No.1 disputes the fact that plaintiff is his biological son.

12. In such circumstances, it would not be appropriate to restrain the defendant No.1 from alienating the property particularly when the doctrine of *lis pendens* is applicable in view of Section 52 of the Transfer of Property Act, 1882 and the plaintiff shall not suffer any prejudice if alienation is made during the pendency of the suit.

13. Keeping in view the aforesaid facts, no ground to interfere is made out.

14. Dismissed accordingly.

15. All the pending miscellaneous applications, if any, are also disposed of.

September 19th, 2023

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No