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

CR-2902-2021 (O&M)
Reserved on : 16.02.2023
Date of Decision : 28.02.2023

Sukhwinder Singh

....Petitioner

VERSUS

Kartar Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Kumar Chopra, Senior Advocate with
Ms. Mehr Singh, Advocate for the petitioner.

Mr. Akshay Bhan, Senior Advocate with
Mr. Rohit Nagpal, Advocate and
Mr. Namit Gautam, Advocate for respondent Nos.1 to 6.

Mr. Aman Sharma, Advocate for respondent Nos.19 and 20.

ALKA SARIN, J.

The present revision petition has been filed by the plaintiff-petitioner aggrieved by the orders dated 18.08.2021 and 16.04.2021 whereby the application filed by him under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC) along with the plaint, has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit on 24.12.2019 for declaration to the effect that he is the owner to the extent of 1/4th share in land measuring 18 bighas 01 biswa 09 biswansi, comprised in the khasra numbers as fully described in the plaint, situated at Village Daad, Tehsil and District Ludhiana on the basis of a Will

dated 05.09.1992. Further, the plaintiff-petitioner sought a declaration with regard to 1/4th share in the house constructed over the land measuring 0 bigha 03 biswa and 08 biswansi situated at Village Daad and for joint possession of the said house. The plaintiff-petitioner also sought a declaration to the effect that the mutation entered in favour of Gurcharan Kaur with regard to the aforesaid properties on the basis of natural succession was illegal, null and void. The plaint was accompanied with an application under Order 39 Rules 1 and 2 CPC for grant of ad-interim injunction. The Trial Court by a detailed order dated 16.04.2021 held that the ingredients of Order 39 Rules 1 and 2 CPC were not made out in the present case and dismissed the application. Aggrieved by the said order, an appeal was preferred by the plaintiff-petitioner which appeal also came to be dismissed vide order dated 18.08.2021. Hence, the present revision petition.

Learned senior counsel appearing on behalf of the plaintiff-petitioner would contend that the plaintiff-petitioner is the nephew of one Banta Singh s/o Prem Singh, who was his maternal uncle, and looked after him since he was the age of 9 years. Banta Singh is stated to have died on 09.09.1992 and after the death of Banta Singh his wife, Gurcharan Kaur, compelled the plaintiff-petitioner to leave the house. It is further the case set up that the plaintiff-petitioner started residing in Village Gill with Pritam Singh son of Ajaib Singh and Kartar Kaur and other family members though living in a separate portion having a common compound. It is submitted that there were various litigations between the plaintiff-petitioner and Pritam Singh and others. It is further the case that in August 2019 the plaintiff-petitioner started some renovation and during the renovation the plaintiff-petitioner came across some old boxes and when the said boxes opened,

certain papers were found including some original sale deeds as well as the original Will dated 05.09.1992 executed by Banta Singh s/o Prem Singh. As per the said Will, 1/4th share in the entire property of Banta Singh was bequeathed to the plaintiff-petitioner, 1/4th share was given to Gurcharan Kaur, 1/4th share was given to Tarlochan Singh and 1/4th share was given to Baldev Singh. It is further the contention that the said Will was never within the knowledge of the plaintiff-petitioner and as soon as the Will was discovered he made enquiries and thereafter learnt that Gurcharan Kaur wife of Banta Singh had got mutation No.4807 entered in her favour on the basis of natural succession and that she had further executed five sale deeds dated 03.05.1995 and 06.04.1993 in favour of defendant-respondent Nos.1 to 6. Learned senior counsel would contend that in case defendant-respondent Nos.1 to 6 are allowed to carry out construction, the right of the plaintiff-petitioner would stand defeated inasmuch as the nature of the suit land would completely be changed. It has also been contended that the suit land needs to be preserved.

Per contra, learned senior counsel appearing on behalf of defendant-respondent Nos.1 to 6 has contended that the total suit land measures about 12-13 acres and the claim of the plaintiff-petitioner is that he is the owner to the extent of 1/4th share. Learned counsel has further contended that the construction of a housing project is being carried out in about 8 acres of land and 4 acres of land with commensurate frontage is lying vacant in Khasra Nos.635, 678, 679, 680, 681, 682, Hadbast No.279, Village Daad, Tehsil and District Ludhiana. It is submitted by the learned senior counsel that principles of *lis pendens* would apply and any

construction carried out by the respondent Nos.1 to 6 would be subject to the outcome of the present civil suit.

Heard.

In the present case, admittedly, the total area of the suit land is about 12-13 acres. The plaintiff-petitioner is staking a claim only to the extent of 1/4th share in this. It has also been brought to the notice of this Court that about 4 acres of land in Khasra Nos.635, 678, 679, 680, 681, 682, Hadbast No.279, Village Daad, Tehsil and District Ludhiana is lying vacant with commensurate frontage. The plaintiff-petitioner in the present case has approached the Court after 27 years of the execution of the alleged unregistered Will dated 05.09.1992 claiming ownership qua 1/4th share in the suit land. Much water has flown under the bridge since the passing away of Banta Singh on 09.09.1992. The suit land was transferred in the name of the wife of Banta Singh, namely, Gurcharan Kaur, who has further sold it and a housing project has since been started after obtaining requisite permissions and letters of intent have also been issued to the prospective buyers. It is also to be noted that the housing project had commenced prior to the filing of the civil suit and infact letters of intent were also issued to the allottees prior to the filing of the present suit. An agreement was entered into between the defendant-respondent Nos.1 to 4 with the Greater Ludhiana Area Development Authority (GLADA) for development of the suit land and thereafter the possession was also taken by the Greater Ludhiana Area Development Authority (GLADA) on 14.05.2019. The housing scheme was published and draw of lots for plots was held on 14.10.2019 and all this happened before the filing of the civil suit. However, to balance the interest of both the parties, this Court is of the view that the interest of the plaintiff-

petitioner would be adequately safeguarded if 4 acres out of the suit land comprised in Khasra Nos.635, 678, 679, 680, 681, 682, Hadbast No.279, Village Daad, Tehsil and District Ludhiana is kept unencumbered during the pendency of the present suit.

Accordingly, the present revision petition is disposed off with a direction that 4 acres out of the suit land comprised in Khasra Nos.635, 678, 679, 680, 681, 682, Hadbast No.279, Village Daad, Tehsil and District Ludhiana shall be kept unencumbered by the defendant-respondent No.1 to 6 during the pendency of the suit. Additionally, any construction raised on the remaining suit land shall be subject to the outcome of the present suit. It is made clear that any construction carried out by the defendant-respondent Nos.1 to 6 would be at their own risk and responsibility and would also be subject to the outcome of the present suit. Disposed off accordingly. Pending applications, if any, also stand disposed off.

Any observations made herein or in the orders passed by both the Courts below shall not be treated as an expression of opinion on the merits of the case.

28.02.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No