

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

CR-5706-2019(O&M)

Date of decision:-28.2.2023

Kewal Krishan

...Petitioner

Versus

Rajinder Kumar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Abhinav Sood, Advocate for
Mr.Vikram Singh, Advocate
for the petitioner.

Mr.Dhruv Mittal, Advocate
for respondent No.2.

H.S. MADAAN, J.

1. In a suit for grant of permanent injunction filed by plaintiff Kewal Krishan against his brothers Rajinder Kumar, Vijay Kumar and Sanjay Kumar and sisters Aarti Trikha and Sunita Rani, on getting notice, only defendant No.2 had appeared and filed a written statement contesting the suit contending that Harbans Lal father of the parties had executed a Will dated 7.9.2009 in favour of defendant No.2 with respect to shop in dispute.

2. During the course of proceedings, plaintiff filed an application for amendment of the plaint so as to take up a plea that alleged Will dated 7.9.2009 Ex.D1 set up by the defendant No.2 is not a legal and valid document and rather during his life time Harbans Lal had expressed his desire to give share in his property to all six children. Therefore, the

Will is liable to be declared as illegal, null and void and plaintiff be allowed to amend the plaint so as to seek a decree for declaration with consequential relief of permanent injunction instead of decree of permanent injunction only.

3. That application was resisted by defendant No.2.

4. The application was dismissed by the trial Court of Civil Judge (Jr.Divn.), Karnal vide impugned order dated 27.8.2019, leaving the plaintiff aggrieved and he has approached this Court by way of filing the present revision petition.

5. Notice of the revision petition was given to respondents and respondent No.2 has put in appearance through counsel.

6. I have heard learned counsel for the parties besides going through the record and I find that the impugned order passed by the trial Court is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity.

7. The trial Court has exercised its discretion in a judicious manner. Furthermore, the plaintiff had filed a suit for grant of permanent injunction against his siblings for restraining them from making alienation with regard to the shop in question without partitioning the same and not more than their 5/6 share. The law is well settled that in a suit for permanent injunction, question of title is not to be decided. The parties may get that dispute adjudicated by a separate suit. The trial Court was justified in dismissing the application for amendment of the plaint, which was found to be at a highly belated stage.

8. Finding no merit in the revision petition, the same stands dismissed.

The interim order dated 12.9.2019 passed by this Court staying passing of final order by the trial Court stands withdrawn.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

However, nothing discussion above shall have any bearing on the final merits of the case.

28.2.2023

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No