

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

CR-102-2023 (O&M)

Date of Decision: 09.01.2023

Ashok Kumar

.....Petitioner

Versus

Lok Nath and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Bhisham Kumar Majoka, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein, is directed against an appellate order dated 15.09.2022 (Annexure P-10) passed by Ld. Additional District Judge, Faridabad in CMA No.194 of 2018, dismissing the appeal filed by petitioner/plaintiff against order dated 15.11.2018 (Annexure P-8) passed by the Ld. Civil Judge (Jr. Divn.), Faridabad, upholding the rejection of application filed by petitioner under Order 39 Rules 1 and 2 CPC.

2. Civil suit is for partition of family property with consequential relief of permanent injunction.

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

4. Impugned order dated 15.09.2022 is premised, *inter alia*, on the following reasoning:

“xxx

xxx

xxx

13- This is a suit for partition with consequential relief of permanent injunction. It is an admitted case of the parties that initially Khushi Ram was owner of a residential house no.3A/41 NIT Faridabad. It is further not disputed that a civil suit bearing no 64 titled Subhash Chander Versus Sunita and others, plaintiff, defendants no. 1 and 2 had become owner of 59 sq. yards each and Smt. Ram Devi become owner of 119 sq. yards and their sisters have relinquished their shares in favour of their mother and brothers. Now the dispute is regarding 119 sq. yards land owned and possessed by Smt. Ram devi (since deceased). As per plaintiff, he is having 1/3rd share in the property of Smt. Ram Devi whereas claim of the defendants no. 1 and 2 is that plaintiff

had already received Rs.1,80,000/- in lieu of his share in the property of his mother Smt. Ram Devi. Sisters of plaintiff and defendant also claiming that she is also having 1/6th share. Admittedly, Smt. Ram Devi had died intestate and she was having three sons and three daughters. After death of Ramdevi all the six children have equal share i.e. 1/6th each and in the present case plaintiff is claiming 1/3rd share. Further, defendants no.1 and 2 have taken a specific stand that plaintiff had received Rs. 1,80,000/- and executed a receipt for waiving his right in his mother's property. This fact has not been disclosed by the plaintiff in his pleadings. No doubt, whether he had received an amount of Rs.1,80,000/- or not shall be decided when both the parties will lead their respective evidence. However, prima facie a receipt is available on the file. Moreover, as discussed above plaintiff is having 1/3rd share because three sisters are also having share in the property of their mother. They nowhere relinquish their share in their mother's property.

14- In the considered opinion of this Court, learned lower court has rightly dismissed the application under Order 39 Rules 1 & 2 of CPC.”

5. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law, so as to exercise extraordinary revisional jurisdiction vested with this Court.

6. Moreover, the non-grant of interim injunction during pendency of the trial is subject to the general principle of *lis pendens*. In the premise, in the eventuality of the plaintiff (petitioner herein) succeeding in his suit, needless to say, any alienation of the suit property and/or construction thereon by the respondents during pendency of the trial, would be at their own risk and cost. In any case, it is not a case where any irreparable loss would be caused to the plaintiff and in the event of his succeeding he can be compensated by the defendants by computing the same.

7. Resultantly, there is no room for interference in the aforesaid valid reasons recorded by the Ld. Appellate Court as also by the Ld. Trial Court, with which I am in agreement.

8. Dismissed.

(ARUN MONGA)
JUDGE

January 09, 2023
ashish

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