

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-7405-2023

Date of Decision: 8.12.2023

Jeevan Lal and another

....Petitioners

VERSUS

Savita and another

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Kulvir Narwal, Advocate with
Mr. Satish Kumar, Advocate,
for the petitioners.

KARAMJIT SINGH, J.

Present revision petition has been filed by the petitioners/defendants for setting aside the impugned order dated 31.5.2023 (Annexure P-4) passed by the Court of Additional Civil Judge, Senior Division, Palwal and impugned orders dated 8.6.2023 (Annexure P-5) passed by the Vacation Judge/Additional District Judge, Palwal and order dated 6.11.2023 (Annexure P-6) passed by the Court of Additional District Judge, Palwal.

2. Brief facts of the case are that respondent No.1 has filed suit for declaration and permanent injunction with regard to suit property on the ground that the suit property is ancestral in the hands of petitioner No.1 who is the father of respondent No.1 and petitioner No.2 and she is having right in the said property by birth and she also challenged relinquishment deed dated 20.10.2010 executed by petitioner No.1 in favour of petitioner No.2 and respondent No.2 and subsequent mutation No.9096 being illegal, null and void. Along with the suit, respondent No.1 also filed an injunction

application under Order 39 Rule 1 & 2 CPC. The suit and the injunction application was contested by the petitioners. Learned trial Court partly allowed the injunction application in favour of respondent No.1 vide impugned order dated 31.5.2023 (Annexure P-4). Being aggrieved, the petitioners filed an appeal against the said order wherein Vacation Judge/Additional District Judge, Palwal passed order dated 8.6.2023 (Annexure P-5) to the effect that in order to protect the interest of respondent No.1, the petitioners-defendants are directed not to alienate the suit property beyond 5 Kanal each till decision of the suit and the said Court directed that the case be put up before the Regular Court on 3.7.2023. Subsequently, regular Court of Additional District Judge vide order dated 6.11.2023 (Annexure P-6) disposed of the appeal vide impugned order dated 31.5.2023 with the following observations : -

“3. The impugned order dated 31.5.2023 already stands modified vide order dated 08.6.2023 passed by Learned Vacation Judge. As the said order has already been clarified vide detailed order dated 05.7.2023 passed by this Court, no further arguments or modifications are required. The present Civil Miscellaneous Appeal is hereby disposed off in terms of order dated 08.6.2023. A copy of this order be sent to the learned Trial Court for information. File of the present Civil Miscellaneous Appeal be consigned to record room after due compliance.”

3. The petitioners being aggrieved by impugned orders Annexures P-4, P-5 and P-6, have filed the present civil revision petition.

4. I have heard counsel for the petitioners.

5. Counsel for the petitioners, while referring to consent decree dated 19.1.1990 passed by the Court of Sub Judge, 1st Class, Palwal (Annexure P-1) submits that part of the suit property came to petitioner No.1 from his real sister vide aforesaid consent decree and the said land cannot be termed as ancestral land and that this fact was discussed by the learned trial Court in its order (Annexure P-4) but not in right perspective. Counsel for the petitioners further submits that the appellate Court disposed off the appeal in a very casual manner vide impugned order (Annexure P-6) without granting any opportunity of proper hearing to the petitioners; that even otherwise, while passing the said order, the appellate Court failed to take into consideration the fact that part of the suit property covered under decree (Annexure P-1) was not ancestral in the hands of petitioner No.1 and as such, petitioner No.1 could not be restrained from alienating the said non-ancestral property. Counsel for the petitioners further submits that in the given circumstances, the impugned orders are liable to be set aside.

6. I have considered the submissions made by the counsel for the parties and gone through the impugned order (Annexure P-6) passed by the appellate Court.

7. From the perusal of impugned order (Annexure P-6), it appears that the same has been passed by the appellate Court without properly appreciating the subject matter in issue and further, without taking into consideration the fact of decree (Annexure P-1) dated 19.1.1990. Even otherwise, no reasons are given in the impugned order (Annexure P-6) whereby the appeal filed by the petitioners was disposed of by simply saying that the impugned order dated 31.5.2023 already stands modified vide order dated 8.6.2023 and as the said order has already been clarified

vide detailed order dated 5.7.2023, no further arguments or modifications are required and consequently, civil miscellaneous appeal disposed of in terms of order dated 8.6.2023. So, this Court is of the view that the appeal filed by the petitioners was not disposed of finally by the appellate Court in accordance with law after giving proper opportunity of hearing to both the parties and accordingly, impugned orders (Annexures P-5 and P-6) deserve to be set aside.

8. For the foregoing reasons, without commenting on the merits of the case, the present petition is partly allowed and impugned orders (Annexure P-5) dated 8.6.2023 and (Annexure P-6) dated 6.11.2023 are hereby set aside with directions to the first appellate Court to decide the appeal filed by the petitioners in accordance with law after giving proper opportunity of hearing to both the parties. The petitioners are directed to appear before the first appellate Court on 8.1.2024.

9. Keeping in view the nature of order being passed, no notice is required to be issued to the respondent No.1. However, if she feels dissatisfied with this order, she may move an application to recall the same.

(KARAMJIT SINGH)
JUDGE

December 8, 2023
Paritosh Kumar

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