

CR-1639-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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Date of decision:14.05.2024

Kulwant Singh

...Petitioner.

Versus

Gurmehak Singh

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Sunny K. Singla, Advocate
for the petitioner.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged the order dated 18.01.2024 (Annexure P-6) passed by learned Additional District Judge, Ludhiana, vide which the appeal preferred by appellant/ plaintiff against order dated 12.07.2022 passed by the trial Court dismissing the application under Order 39 Rules 1 and 2 read with Section 151 CPC, was dismissed.

2. The brief facts for adjudication of the present revision petition are that the petitioner/ plaintiff has filed a suit for declaration to the effect that the document of transfer of ownership dated 21.04.2011 bearing vasika No.229 allegedly executed by the plaintiff in favour of defendant No.1 regarding the suit property is illegal, null and void and is only paper

transaction and also sought the further declaration that the plaintiff is owner in possession of the land measuring 24 kanal 0 marla as mentioned in the head note of the plaint and relief of permanent injunction was also sought.

3. It was alleged that the petitioner/ plaintiff and defendants No.2 to 27 are co-owners in joint possession of the suit property and the plaintiff is owner of the extent of 24 kanal 6 ½ marla. The plaintiff married Kamaljit Kaur on 25.10.1998 and out of this wedlock, a son i.e. respondent/ defendant No.1 Gurmahek Singh was born. Kamaljit Kaur wife of the plaintiff, died on 01.02.2011 and after her death, a false criminal case bearing FIR No.23 dated 02.02.2011, under Section 306 IPC was registered against plaintiff Kulwant Singh, Manjit Kaur, Mohinder Singh, Surjit Singh and Dalvir Kaur by Kulwant Kaur, mother-in-law of the plaintiff, who took Gurmahek Singh with her while the plaintiff was under shock, depression and felt alone and helpless due to the death of his wife. It was alleged that under the impulse of greed and to grab the property of the plaintiff, Kulwant Kaur continuously pressurized him to transfer the property in favour of respondent/ defendant No.1. Taking advantage of the mental status of the plaintiff, Kulwant Kaur manufactured an alleged document of transfer of ownership dated 21.04.2011 bearing vasika No.229, in connivance with witnesses and revenue authorities. The alleged document of transfer of ownership dated 21.04.2011 bearing vasika No.229 is illegal, null and void and merely a paper transaction and it is not the result of the free consent of the plaintiff. It has been alleged that at that time the plaintiff was not in a fit state of mind to understand his good and bad. The above said document was

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not read over or explained to him. No consideration was paid to the plaintiff. There was no question of executing and registering the alleged document by the petitioner/ plaintiff in favour of respondent/ defendant No.1, when he was a minor and was in the custody of Kulwant Kaur. The possession on the basis of the alleged document of transfer of ownership was not transferred by the plaintiff to respondent/ defendant No.1 and the plaintiff is still in possession of the suit property. The plaintiff requested many times to treat the alleged document of transfer of ownership dated 21.04.2011, vasika No.229 as illegal, null and void and also requested to set aside the transfer deed and to treat the plaintiff as the owner of the suit property but respondent/ defendant No.1 paid no heed to the genuine request of the plaintiff and is threatening to alienate the suit property. Alongwith the suit, the plaintiff also filed an application under Order 39 Rules 1 and 2 read with Section 151 CPC.

4. Upon notice, the respondent/ defendant No.1 appeared through counsel and filed written statement and reply to the stay application taking preliminary objections regarding maintainability; the suit not properly valued for the purpose of jurisdiction and Court fee; having no cause of action and locus standi to file the present suit. It was admitted that defendants No.2 to 27 were co-owners. It was alleged that the plaintiff had executed the registered transfer deed of the suit property i.e. 24 kanal 0 marla in favour of defendant No.1 in his sound state of mind, without any pressure and with his free consent. It was alleged that respondent/ defendant No.1 is the real son of the plaintiff, so the plaintiff had love and affection

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for him as he being his only child. It was alleged that at the time of execution and registration of the transfer deed dated 21.04.2011, the respondent/ defendant was residing with the plaintiff/ petitioner and transfer deed dated 21.04.2011 is legal, valid and genuine document, which creates every right and title of the respondent/ defendant No.1 over the suit property. It was alleged that at the time of the execution of the said transfer deed, the possession of the suit property i.e. 24 kanal 0 marla was delivered by the plaintiff to respondent/ defendant No.1 on 19.04.2011. The plaintiff had been released on bail and he was not under any depression or any fear and was fully able to understand his good and bad. Reply to the application filed under Order 39 Rules 1 and 2 CPC was also filed.

5. The aforesaid application under Order 39 Rules 1 and 2 read with Section 151 CPC filed by the plaintiff was dismissed by trial Court, vide order dated 12.07.2022. The petitioner/ plaintiff preferred an appeal before the first Appellate Court, Ludhiana, which was dismissed, vide judgment dated 18.01.2024. Aggrieved against the said judgment, the plaintiff/ revision petitioner has knocked the doors of this Court by way of present revision petition.

6. Learned counsel for the revision petitioner has contended that the Courts below have not appreciated that admittedly the plaintiff was owner in possession of the suit property till 20.04.2011 and the alleged transfer deed was executed on 21.04.2011. At the time of execution of the said transfer deed, respondent/ defendant No.1 was a minor and was in custody of Kulwant Kaur. He has argued that and the said document was not

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executed with free consent of the petitioner/ plaintiff. The petitioner was under shock, depression and felt alone and helpless due to the death of his wife and was involved in the false criminal case at instance of his mother-in-law, Kulwant Kaur who pressurized him to transfer the ownership of the suit property vide transfer deed dated 21.04.2011 and he was not in a fit state of mind to understand his good and bad.

7. The submissions made by learned counsel for the petitioner has been heard and relevant record has been perused.

8. The perusal of record reveals that as per jamabandi for the year 2006-07, the plaintiff/ petitioner was a co-sharer in the suit property to the extent of his share therein. The transfer deed dated 21.04.2011 was executed by him in favour of respondent/ defendant No.1, who is his real son. It is a registered document. It has been rightly held that it is a matter of evidence for the plaintiff/ petitioner to prove that whether the aforesaid transfer deed in question is illegal, null and void. It is again a matter of evidence that whether at the time of execution of the aforesaid transfer deed, the petitioner/ plaintiff was not in a fit state of mind and was not in the condition to understand his good and bad or that the said document has not been prepared at his instance and same was not read over or explained to him.

9. So, when the alleged contentions raised by the petitioner/ plaintiff are a matter of evidence which are to be appreciated only after adducing of the cogent evidence by both the parties, then at this stage no prima facie case is made out in favour of the plaintiff and application of the

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petitioner/ plaintiff filed under Order 39 Rules 1 and 2 CPC has been rightly dismissed by the trial Court and appeal against the said order was also rightly dismissed by the First Appellate Court.

10. Thus, there being no illegality or infirmity in the impugned judgment no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

11. All pending applications, if any, also stand disposed of accordingly.

12. Nothing expressed hereinabove shall be construed as an expression on the merit of the case.

(SUKHVINDER KAUR)
JUDGE

14.05.2024.
komal

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No