

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

128

CR-1426-2021

Date of decision: 25.01.2024

**ANGREJ SINGH (DECEASED) THROUGH LR
JAGMOHAN KAUR NOW DECEASED THROUGH
LR GURDARSHAN KAUR**

..Petitioner**Versus****GURDEEP SINGH (THROUGH LRS) AND ORS****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Hardip Singh, Advocate
for the petitioner.

Mr. Bikramjeet Singh Jatana, Advocate
for respondent No.1(b).

Mr. Gautam Kumar, Advocate
for Mr. Satnam Singh Gill, Advocate
for respondent No.2.

ANIL KSHETARPAL, J(Oral)

1. This revision petition has been filed by the plaintiff to challenge the correctness of the order passed by the trial Court on 04.03.2021, while refusing to restore the suit, which was dismissed under Order XVII Rule 3 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC"). The plaintiff filed a suit for grant of decree of permanent injunction. He claims the estate of late Sh. Arjan Singh, who was brother of his grandmother on the basis of the Will dated 10.07.2003. A similar previous suit filed by the petitioner, was dismissed as withdrawn on 25.02.2015. Subsequently, the plaintiff filed a fresh suit in the year 2015, itself.

2. On 23.05.2018, trial Court framed the following issues on appreciation of pleadings of the respective parties:-

- “1. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP*
- 2. Whether the suit of the plaintiff is not maintainable? OPD*
- 3. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
- 4. Relief.”*

3. Thereafter, the case was adjourned to 09.07.2018, 28.08.2018, 08.10.2018 and 15.10.2018, however, neither the plaintiff nor his learned counsel entered appearance. Thus, the Court dismissed the suit under Order XVII Rule 3 of the CPC as the plaintiff did not produce any evidence.

4. He filed an application for restoration, which has also been dismissed.

5. On the other hand, the learned counsel representing the respondents has submitted that Sh. Arjan Singh was not the brother of grandmother of Sh. Angrej Singh. He submits that Sh. Arjan Singh bequeathed his property in favour of his nephews Sh. Satwinder Singh, Sh. Tarlochan Singh, Sh. Harjeet Singh and Sh. Sarabjit Singh on 10.09.2003, and on the basis of the aforesaid testament, these persons have transferred the property in favour of respondent No.2.

6. The learned counsel representing the petitioner submits that the application for restoration of the suit was filed within a period of 15 days and therefore, the Court has erred in refusing to restore the suit.

7. This Court has considered the submissions of the learned counsel representing the parties.

8. It is evident that the petitioner has never filed any suit for grant

injunction. In substance, the petitioner claims estate of Sh. Arjan Singh on the basis of a testament. He is required to file a suit for grant of decree of declaration particularly when respondents are also claiming subsequent Will in their favour. Filing of mere suit for injunction should have been avoided.

9. Moreover, more than 5 years have elapsed from the date, when the suit was dismissed under Order XVII Rule 3 of the CPC. No untoward incident has taken place.

10. Keeping in view the aforesaid facts, no ground to interfere is made out.

11. Dismissed accordingly.

12. All the pending miscellaneous applications, if any, are also disposed of.

January 25th, 2024

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(ANIL KSHETARPAL)
JUDGE

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