

**CR No.3389 of 2024****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.****Sr. No.123****Case No. : CR No.3389 of 2024****Date of Decision : May 30, 2024**

Urmila Rani and others Petitioners

vs.

Ramesh Kumar and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Vinod K. Kanwal, Advocate
for the petitioners.

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GURBIR SINGH, J. :

1. Challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 04.01.2024 (Annexure P-9), passed by learned Additional Civil Judge (Senior Division), Sangrur (for brevity – Trial Court) and order dated 15.04.2024 (Annexure P-11), passed by learned Additional District Judge, Sangrur (for brevity – Appellate Court), whereby application filed by the petitioners under Order 39 Rules 1 and 2 read with Section CPC has been dismissed.

2. The parties hereinafter shall be addressed to as per their original status in the suit before the Courts below.

3. The facts in brief, which are necessary for proper adjudication of the present revision petition, are that plaintiff no.1 has one sister Anju Bala (predecessor-in-interest of plaintiffs no. 2 to 4) and two brothers i.e.



defendant no.1 – Ramesh and defendant no.2 – Naresh. Defendant no. 3 is the son of defendant no.1 and defendant no.4 is the wife of defendant no.2. The grandfather of plaintiff no.1 and defendants no.1 & 2 was owner in possession of the house measuring 279 sq. yards bearing no.153 and another house measuring 75 sq. yards bearing no.54 situated at Santpura Mohalla, Sangrur. During his life-time, a family settlement was effected between him and his sons Dilbag Rai (father of plaintiff no.1 and defendants no.1 & 2) and Sumer Dass, vide deed dated 02.04.1966. In the said settlement, Sumer Dass was given the aforesaid house measuring 75 sq. yards; out of another house bearing no. 153 measuring 279 sq. yards, 143 sq. yards was given to Dilbag Rai and remaining 136 sq. yard was kept by Mool Chand himself.

4. It is important to note here that another son of Mool Chand namely Parkash Chand had already been given his share by Mool Chand, prior to the aforesaid partition. Dilbag Rai had become owner in possession of house measuring 143 sq. yards.

5. After about 12 years of the above-said settlement, Mool Chand died on 03.02.1978 and about 10 years thereafter, his wife Veeran Bai died on 31.05.1988. After her death, Parkash Chand, Dilbag Rai and Sumer Dass effected a family partition with regard to the above said house measuring 136 sq. yards among themselves with the consent of other legal heirs of Mool Chand. Later on, a memorandum of partition was also written by them on 21.10.1988. Dilbag Rai became owner in possession of a portion of aforesaid house, which measured 43 sq. yards and consisted of two rooms but he converted it into four shops. Sumer Dass transferred his share to his



son Vikramjit Singh. Parkash Chand also sold his share to Vikramjit Singh. So, Vikramjit Singh became owner of the two portions i.e. belonging to share of his father Sumer Dass and also uncle Parkash Chand. Dilbag Rai died leaving behind two sons (defendants no.1 and 2), two daughters (plaintiff no.1 and Anju Bala) and wife Vidyawanti as his legal heirs. They succeeded inheritance of Dilbag Rai in equal shares i.e. 1/5th share each. Defendants no.1 and 2 started paying plaintiff no.1 and Anju Bala their share in the rent received by them from the said four shops after the death of Dilbag Rai. On 05.11.2011, Vidyawanti had died and thereafter, plaintiff no.1, Anju Bala, defendants no.1 and 2 had become owners of the house measuring 143 sq. yards and shops measuring 43 sq. yards to the extent of $\frac{1}{4}$ share each. Thereafter, plaintiff and Anju Bala had been receiving the rent of the shops as per their $\frac{1}{4}$ share. About 6 years ago, defendants no.1 and 2 had constructed four shops in the part of the house measuring 143 sq. yards as fully detailed in the head note of the plaint, with the consent of plaintiff no. 1 and Anju Bala. Defendants no.1 and 2 gave the said shops on rent to tenants and they started paying rent to plaintiff no.1 and Anju Bala from the rent received by them from the tenants of the said four shops, besides the earlier rent of the shops mentioned in the head note of the plaint. Anju Bala died on 04.03.2020 leaving behind plaintiffs no.2 to 4 as her legal heirs. Plaintiff no. 2 was husband, plaintiffs no 3 and 4 were son and daughter of Anju Bala who had become owners of the said house and shops in dispute to the extent of $\frac{1}{4}$ share of Anju Bala. About a month ago, plaintiff No.1 came to Sangrur to collect the rent of her share as well as the share of plaintiffs no.

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2 to 4 as defendants No.1 and 2 had stopped paying their share of rent for the last 7-8 months. Plaintiff No.1 came to know from the tenants that defendant No.5 had started the process to get the possession of the said house and shops in question by alleging that defendants no.1 to 4 had allegedly defaulted in paying the installments of the alleged loan. Then plaintiff No.1 approached defendant No.5, who told her that defendant No.1 had transferred 99.72 sq. yards of the house in question to his son Aman Kumar i.e. defendant No.3 vide transfer deed no. 401 dated 15.05.2014. Similarly, defendant no.2 had transferred $\frac{1}{2}$ share of the said house to his wife i.e. defendant no.4 to the extent of $\frac{1}{2}$ share vide transfer deed no. 409 dated 15.05.2014. The alleged transfer deeds were illegal, null and void and confers no title in favour of defendants no.3 and 4 and have no effect upon the rights, title and interest of the plaintiffs in the said houses. Defendants No.3 and 4 took loan from defendant No.5, on the basis of alleged transfer deeds, to which they had no right. Defendant no.2 stood guarantor against the said loan taken by defendants no.3 and 4. Defendant no.5 had no right to recover the alleged loan of defendants no.1 to 4 from the share of plaintiffs as aforesaid. Defendants no.1 and 2, in connivance with officials of Municipal Committee, Sangrur, got changed the TSI entries of the above said house in the assessment register of Municipal Committee in their name and they allegedly transferred the suit house in the name of defendants no. 3 and 4 vide alleged transfer deeds. The alleged TSI entries and transfer deeds were wrong, illegal, null and void. Plaintiffs requested the defendants to admit their claim but in vain. Plaintiffs were left with no option but to file



the suit in question to get the relief they deserved.

6. Defendants no. 1 to 4 appeared and contested the suit by filing written statement, raising preliminary objections therein pertaining to maintainability, cause of action, locus standi and concealment of material facts. On merits, relationship between the parties, ownership over the disputed house and shops even by plaintiff no.1 and Anju Bala to the extent of their shares of $\frac{1}{4}$ each were admitted. However, other averments of the plaint were denied.

7. Simultaneously, defendant no.5 also appeared and filed separate written statement raising objections regarding maintainability; cause of action; jurisdiction etc. On merits, it was submitted that the alleged partition deed as well as the alleged memorandum deed were false and fabricated documents. The transfer deeds no.401 and 409 dated 15.05.2014 were legal and properly executed before the Sub Registrar, Sangrur. Denying remaining averments averred in the plaint, prayer for dismissal of the suit was made.

8. The plaintiffs also filed an application under Order 39 Rules 1 and 2 CPC for restraining defendants no.5 to 7 from taking possession of the house and shops, as detailed in the head note of the plaint, and from selling the same as defendants no.3 and 4 had no right to give the said house and shops as security/guarantee to defendant no.5 against loan, allegedly taken by defendants no.3 and 4 as they were not the owners of the house and shops. The said application was dismissed by the learned Trial Court vide order dated 04.01.2024. The appeal preferred by the plaintiffs against the said order was also dismissed. Faced with this situation, the plaintiffs have



approached this Court by way of the instant revision petition.

9. Learned counsel for the plaintiffs/petitioners has argued that the private defendants have no right in the suit property. Even otherwise, defendant no.5 cannot recover the loan, allegedly taken against the suit property, from the guarantor of the loan in question or by alternative means, in accordance with law. The private defendants have acted with malafide intent to defeat the interest of the petitioners. In case the suit property is sold for recovery of the loan amount, the petitioner would suffer irreparable loss and injury. The impugned orders were passed without going into the real controversy between the parties. If the suit properties are allowed to be sold, the petitioners would lose ancestral/inherited properties.

10. I have heard the submissions of learned counsel for the petitioners and perused the case file in detail.

11. It is well settled that for grant of temporary injunction, the Court is to see three basic ingredients i.e. *(i)* prima facie case; *(ii)* balance of convenience and *(iii)* irreparable loss or injury.

12. The plaintiffs have challenged the family settlement dated 02.04.1966 and also the memorandum of partition dated 21.10.1988. The plaintiffs have also challenged the transfer deed No.401 dated 15.05.2014, whereby defendant no.1 had transferred 99.72 sq. yards of the house to his son Aman Kumar – defendant no.3. The plaintiffs have also challenged the transfer deed No.409 dated 15.05.2014,, executed by defendant no.2, whereby he had transferred half share of the said house to his wife – defendant no.4. On the basis of said transfer deeds, defendants no.3 and 4



took loan from defendant no.5 and defendant no.2 stood as guarantor for the payment of said loan. The entry is already changed in the TSI, maintained by Municipal Committee, Sangrur. The suit has been filed in October 2022. There is no explanation as to why plaintiffs did not challenge the family settlements earlier. Prima facie, suit is barred by limitation. Defendant no.1 was acting as ostensible owner of the suit property. The bank, relying upon the documents, advanced loan. Prima-facie, the plaintiffs are estopped from claiming any interest in the suit property.

13. In view of the foregoing discussion, the present revision petition is found to be without any merit and the same is accordingly dismissed in limine.

14. Pending applications, if any, shall stand disposed of along with this judgment.

May 30, 2024

monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.