

132 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4307-2022(O&M)

Date of decision :31.01.2024

Rakhi Kwatra

...Petitioner

Vs.

Kavita Thakur and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harsh Raheja, Advocate
for the petitioner.

Mr. Viren Jain, Advocate and
Ms. Komaljit Kaur, Advocate
for respondent No.2.

ANIL KSHETARPAL, J.(ORAL)

1. The petitioner herein is defendant No.1 in Civil Suit No. 3915 of 2020 titled as '*Kavita Thakur vs Rakhi Kwatra and another*'. In that suit the petitioner's sister Anudeep Kaur @ Anu Mehra (defendant No.2) in the suit, filed counter claim while seeking with the following prayers:-

"1) Declaration to the extent that the Counter Claimant/Defendant no. 2 and Defendant no. 1 are the only class 1 legal heirs and successors to the estate of late Sh. Rajinder Singh, son of Late Sh. Gurbachan Singh; being his daughters, and having succeeded to his estate (including immovable and movable assets) upon his demise intestate; and that the Plaintiff or her alleged minor son have no concern with the estate of late Sh. Rajinder Singh as the Plaintiff is not the wife of late Sh. Rajinder Singh nor there is any alleged minor son born of the alleged wedlock.

AND

ii) Declaration to the effect that the alleged marriage between respondent/plaintiff and late S. Rajinder Singh is illegal and null and void;

AND

iii) Declaration to the effect that the mutation No. 16740 got sanctioned by Plaintiff illegally in favour of herself and her alleged minor son with respect to the property at Farmhouse known as Rajinder Singh Farm,

comprised in Khasra No. 27//21/2, 27//20/1, 27//22/1, 27//22/3, 27//22/4, 53//1/2, 53//2, 53// 3/1, 53//9/2, 53//10/1, situated in the revenue estate of Lalton Kalan 1, Hadbast no. 291, Tehsil Ludhiana South, District Ludhiana, by alleging herself to be the wife and one alleged Ranvir Singh (Minor) to be son of late Sh. Rajinder Singh, is illegal, null and void ab initio, fraudulent, non-est, having no legal value in the eyes of law and not binding on the valuable rights of the Counter Claimant/Defendant no. 2;

AND

(iv) Permanent Injunction restraining the Plaintiff and her alleged minor son themselves or through their attorneys, agents, associates, assignees etc. from, alienating/transferring by way of sale, mortgage, gift, lease etc. the suit properties or any specific part thereof, in any manner whatsoever, or from creating any lien or third party interest in any manner whatsoever in the suit properties and from interfering in the peaceful possession of the Counter Claimant/Defendant no. 2. over the suit properties and/or from dispossessing the Counter Claimant/Defendant no. 2 from the said suit properties;

AND

(v) For Recovery of Possession of portion comprising of one room on ground floor of House no. 323, Model Town, near Lal Kothi, Ludhiana (as shown as green in colour in the site plan attached by the Plaintiff) being illegally occupied by her despite termination of the license (permission), and to handover its vacant possession to the Counter Claimant/Defendant no. 2; may kindly be passed in favour of the Counter Claimant/Defendant no. 2 and against the Plaintiff and her alleged minor son-Ranvir Singh with costs. Any other additional or alternative relief to which the Counter Claimant/ Defendant no. 2 may be found entitled to under law and equity, may also be granted to the Counter Claimant/ Defendant no. 2."

2. The petitioner filed an application under Order VII Rule 11 Code of Civil Procedure for rejecting the counter claim on the ground that there is some conflict in the stand taken by the counter-claimant in the joint written statement filed by her with the petitioner *vis-a-vis* the counter claim. The petitioner also alleges that counter claim against a co-defendant is not maintainable. The counter claim was filed on the basis of cause of action,

which accrued subsequent to the filing of the written statement. Learned trial Court on examination of record dismissed the application.

3. Learned counsel representing the petitioner has reiterated the aforesaid grounds. It is evident from reading of the prayer clause that no relief against the petitioner (defendant No.1) has been sought in the counter claim.

4. Learned counsel representing the respondent No. 2 (defendant No.2) specifically states that no relief against the petitioner i.e. defendant No.1 has been claimed.

5. Still further, it is evident that even if there is some conflict in the stand taken in the written statement *vis-a-vis* the counter claim, the effect thereof shall be considered by the Court on while deciding the main case. At this stage, there is no occasion to reject the counter claim, which is in fact a separate plaint at the threshold.

6. As regards the last submission, it will be noticed that the counter claim is not only seeking declaration to the effect that mutation No. 16740 sanctioned in favour of the plaintiff is illegal, but also seeking declaration that only defendant No.1 and defendant No.2 are the class I heirs of late Sh. Rajinder Singh, their father.

7. Keeping in view the aforesaid facts, no ground for interference is made out.

8. Hence, dismissed.

(ANIL KSHETARPAL)
JUDGE

31.01.2024

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Whether speaking/reasoned :
Whether Reportable :

Yes
Yes

No
No