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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-121-2024 (O&M)
Date of decision : 07.03.2024

Davinderpal Kaur ... Petitioner(s)

Versus

Rajpal Singh & Anr. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 10.10.2023 passed by the Family Court, Camp Court Malerkotla (Annexure P-5).
2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner herein filed a suit for fixation of maintenance @ Rs.20,000/- per month as well as for declaration to the effect that charge/lien of maintenance of the plaintiff-petitioner be made on land measuring 15 kanals 1 marlas fully described in the plaint and for issuance of permanent prohibitory injunction restraining defendant-respondent No.1 from alienating by way of sale or mortgage or in any other manner the suit property fully described in the heading of the plaint. Alongwith the said suit, an application was filed under Order 33 Rules 1 and 2 of the Code of Civil Procedure, 1908 for

permission to sue as forma pauperis. Alongwith the said suit, an application was also filed under Order 39 Rules 1 and 2 CPC with a prayer that *ad interim* injunction be granted as described in the heading (C) of the plaint which reads as under:-

“C) Suit for issuance of permanent prohibitory injunction restraining the defendant/respondent from alienating by way of sale or mortgage or in any other manner the suit property fully described in heading (B) of the plaint as the charge of the maintenance of the plaintiff/applicant is on the said land and from dispossessing the plaintiff from the suit land and house constructed in the above said land mentioned above or any other relief.”

Reply was filed to the said application. Vide the impugned order dated 10.10.2023 the application was dismissed. Aggrieved by the same the present revision petition has been filed.

3. Learned counsel for the plaintiff-petitioner would contend that the plaintiff-petitioner is the legally wedded wife of defendant-respondent No.1 and hence entitled to the maintenance. It is further the contention of the learned counsel that the interim relief as prayed ought to have been granted in order to safeguard the rights of the plaintiff-petitioner.

4. I have heard the learned counsel for the plaintiff-petitioner.

5. In the present case the Family Court while dealing with the application has held that the discretionary relief under Order 39 Rules 1 and 2 CPC can only be granted in favour of a party whose conduct is unblemished and who approaches the Court with clean hands. It has been

observed in the order that plaintiff No.2 (respondent No.2 herein), who is the minor child of the plaintiff-petitioner and defendant-respondent No.1, has been residing with defendant-respondent No.1. Despite the fact that this is well within the knowledge of the plaintiff-petitioner, she has claimed maintenance on behalf of the minor child showing herself to being his guardian in the present suit. It is only after a period of one year and a half year from the date of the institution of the suit that the plaintiff-petitioner appeared in Court and suffered a statement on 29.03.2022 that she withdraws the claim qua plaintiff No.2 (respondent No.2 herein) as he was not residing with her. The Family Court further held that there was concealment of material facts on the part of the plaintiff-petitioner. It is further observed that vide sale deed dated 23.02.2017 the plaintiff-petitioner had herself sold substantial immovable property for a sale consideration of Rs.2,81,000/-. Subsequently, she sold another property for a sale consideration of Rs.2,25,000/- vide sale deed dated 25.04.2017. She further sold more property for a sale consideration of Rs.2,70,000/- vide sale deed dated 17.07.2017 and the factum of the execution of all the above-mentioned sale deeds was concealed by the plaintiff-petitioner. Rather, she has pleaded that she be given permission to sue as forma pauperis. The Family Court further held that she had sufficient means at her disposal and that during the course of the arguments no justifiable explanation was given for concealment of the aforesaid sale transactions. Even before this Court no explanation is forthcoming for not having approached the Court with clean

hands. The learned counsel has not been able to show as to how a *prima facie* case is made out in favour of the plaintiff-petitioner or how balance of convenience lies in her favour.

6. In view of the above, the present revision petition being devoid of any merit is, accordingly dismissed. Pending applications, if any, also stand disposed off.

07.03.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO