

Before Rameshwar Singh Malik, J.

NAZAR SINGH — *Petitioner*

versus

ROAR SINGH — *Respondent*

CR No. 4985 of 2014

April 28, 2017

Code of Civil Procedure, 1908 — Order 39 Rule 182 — Constitution of India, 1950 — Art. 226 — Temporary injunction against co-sharer — Trial Court allowed application under Order 39 Rule 1 & 2 and granted ad-interim injunction — ADJ vacated the ad interim injunction — Parties are descendants of late Sh. Joginder Singh — Plaintiff/Petitioner filed suit for permanent injunction — Also filed application under Order 39 Rule 1 & 2 — Trial Court granted ad interim injunction — ADJ vacated it — Entire case of defendants / Respondents is based on Will depriving the petitioner from inheritance in the property in dispute — Civil Revision allowed.

Held that it is not disputed that the Will is yet to be proved by the propounder and beneficiaries thereof. In case, the interim injunction is declined to the plaintiff only on the basis of Will which is yet to be proved, petitioner will suffer irreparable loss and injury.

(Para 6)

Further held there is no doubt that injunction cannot be granted at the instance of one co-sharer against another co-sharer unless the plaintiff – co-sharer against another Co-sharer unless the plaintiff – co-sharer establishes his exclusive possession to the ouster of defendant – co-sharer. However, looking to the stage of the suit for permanent injunction between the parties, plaintiff cannot be denied the relief of even ad interim injunction. In case, the temporary injunction is declined to the plaintiff, his suit itself would be rendered infructuous and he will suffer irreparable loss. – Civil Revision allowed – Order of Trial Court upheld.

(Para 9)

J.K.Khetarpal, Advocate
for the petitioner.

G.S.Punia, Advocate
for respondent Nos.1 to 3.

RAMESHWAR SINGH MALIK, J.(Oral)

(1) Feeling aggrieved against the impugned order dated 03.07.2014 (Annexure P-11) passed by the learned Additional District Judge, whereby ad interim injunction granted by the learned trial Court vide its order dated 03.04.2013(Annexure P-10) in favour of the plaintiff-petitioner, was vacated by the learned Additional District Judge, allowing the miscellaneous appeal of the defendants, plaintiff has approached this Court by way of instant revision petition filed under Article 227 of the Constitution of India, for setting aside the impugned order (Annexure P-11).

(2) Notice of motion was issued and the impugned order passed by the learned Additional District Judge was stayed.

(3) Heard learned counsel for the parties.

(4) It has gone undisputed before this Court that the parties to the litigation are descendants of Late Sh.Joginder Singh. Plaintiff-petitionerhas filed a suit for permanent injunction. During the pendency of the suit, he filed an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure (for short “the CPC”) for the grant of temporary injunction. Learned trial Court vide its order dated 03.04.2013 (Annexure P-10) decided the application under Order 39 Rules 1 and 2 CPC, directing the parties to maintain status quo regarding suit property till final disposal of the suit. However, order (Annexure P-10) passed by the learned trial Court was set aside by the learned Additional District Judge vide its impugned order dated 03.07.2014 (Annexure P-11) allowing the miscellaneous appeal filed by the defendants.

(5) A bare combined reading of both the impugned orders passed by the learned Courts below will make it crystal clear that the learned trial Court rightly passed the order dated 03.04.2013 (Annexure P-10) directing the parties to maintain status quo. However, learned Additional District Judge mis-directed himself and fell in serious error of law, setting aside the order dated 03.04.2013 passed by the learned trial Court, while passing the impugned order (Annexure P-11).

(6) It is so said because the entire case of the defendants-respondents is based on Will (Annexure P-3) suffered by their father Late Sh. Joginder Singh depriving the petitioner from inheritance in the property in dispute owned by Late Shri Joginder Singh. It is also not in dispute that the Will (Annexure P-3) dated 18.07.2008 is yet to be proved by the propounder and beneficiaries thereof. In case, the interim

injunction is declined to the plaintiff-petitioner only on the basis of Will (Annexure P-3), which is yet to be proved, petitioner will suffer irreparable loss and injury.

(7) Learned trial Court was well justified in recording that plaintiff has made out a prima facie case and balance of convenience was also rightly found in favour of the petitioner. Once the petitioner has made out a case for interim injunction satisfying all the basic ingredients for granting interim injunction, learned trial Court was well within its jurisdiction to pass the order dated 03.04.2013 (Annexure P-10) and the same deserves to be upheld.

(8) However, learned Additional District Judge exceeded his jurisdiction, while passing the impugned order dated 03.07.2014 (Annexure P-11), by completely mis-directing himself and illegally ignoring the basic fact that the plaintiff-petitioner has satisfied all the ingredients for granting ad interim injunction. Having said that, this Court feels no hesitation to conclude that the impugned order passed by the learned Additional District Judge cannot be upheld.

(9) There is no doubt that injunction cannot be granted at the instance of one co-sharer against another co-sharer unless the plaintiff-co-sharer establishes his exclusive possession to the ouster of defendant-co-sharer. However, looking to the stage of the suit for permanent injunction between the parties, plaintiff cannot be denied the relief of even ad interim injunction. In case, the temporary injunction is declined to the plaintiff, his suit itself would be rendered infructuous and he will suffer irreparable loss. In that situation, very purpose and object of Order 39 Rules 1 and 2 CPC would stand defeated. Under these peculiar facts and circumstances of the case, it can be safely concluded that the learned trial Court rightly granted the interim injunction in favour of the plaintiff-petitioner, whereas the learned Additional District Judge committed patent illegality, while passing the impugned order (Annexure P-11) and the same cannot be sustained, for this reason also.

(10) No other argument was raised.

(11) Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order dated 03.07.2014 (Annexure P-11) passed by the learned Additional District Judge has been found suffering from patent illegality, the same cannot be sustained. Accordingly, the impugned order dated 03.07.2014

(Annexure P-11) is hereby set aside. Present revision petition deserves to be accepted.

(12) Consequently, it is held that the application of the plaintiff-petitioner filed under Order 39 Rules 1 and 2 CPC was rightly allowed by the learned trial Court vide order (Annexure P-10), the same is hereby restored. Order dated 03.04.2013 (Annexure P-10) passed by the learned trial Court shall continue to operate till final decision of the suit and the parties shall maintain status quo regarding possession as well as alienation of the suit property, during pendency of the suit.

(13) Resultantly, with the above-said observations made and directions issued, instant revision petition stands allowed, however, with no order as to costs.

Amit Aggarwal