

CNR No. PBSAA0 000013 2019

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CS/12/2019

Gurjeet Kaur Vs. Gurdeep Singh & Others

Present: Sh. Tara Chand Gupta Advocate for applicant/plaintiff
Sh. Ranjit Singh Rai Advocate for defendants/respondents

ORDER:-

This order of mine shall dispose of an application under Order XXXIX Rule 1 and 2 of Civil Procedure Code, 1908 (hereinafter referred to as the C.P.C.) filed by plaintiff against defendants restraining defendant No.1 not to alienate any part of property left by Sh.Rajinder Singh, now standing in the name of defendant No.1, comprised in Khata No.436/446, Khasra No.76//16/1/2 (1-2), 17/3/1 (2-0) and 1/2 share of Khasra No.76//16/1/3 (0-1), 25/1 (0-8), and Khata No.433/443, Khasra No.523/2/7 (0-14), 523/2/10 (0-10) and 5/24 share in Khata No.439/449, Khasra No.522/2/2 (0-1), 523/2/5 (0-7) and 5/28 share in Khata No.443/453 Khasra No.520 (0-2) 522/1 (0-4) along with the tubewell, house and all other constructions made therein, as entered in last Jamabandi of the year 2011-12 situated in Kharar, Had Bast No.184, Tehsil Kharar, District Mohali, (hereinafter to be referred as the suit property), during the pendency of present suit.

2. Briefly stated, it is the case of plaintiff that Rajinder Singh had expired on 15.10.2014 and by way of natural succession, plaintiff and defendants had to succeed to his property to the extent of 1/6 share.

It is their case that the suit property is ancestral property. Initially, it was owned by Jagat Singh, grandfather of plaintiff and father of Rajinder Singh deceased, who had expired in the year 1960. His property was inherited by his widow Kartar Kaur, Ajit Kaur and Joginder Kaur, daughters

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and Avtar Singh, Jasbir Singh and Rajinder Singh, sons. Total land was measuring 51 Kanal 10 Marla. The mutation of inheritance of Jagat Singh shows that Rajinder Singh had got the property from his father Jagat Singh, who had inherited the property from Babu Singh, his father. Since, Rajinder Singh had inherited the property from his father, thus the property in hands of Rajinder Singh was Joint Hindu Family Coparcenary Property and plaintiff and defendants had vested interest in the same.

As such, after the death of Rajinder Singh, property should have been mutated in the name of plaintiff and defendants. Defendant No.1 had been telling that the share of plaintiff and other legal heirs lying safe. Plaintiff is residing in her in-laws and has been visiting her mother defendant No.2. Plaintiff came to know that defendant No.1 is about to sell the suit property and intends to settle somewhere else. The moment plaintiff came to know she inquired about the fact but defendant No.1 gave a copy of the Will and when plaintiff objected then defendant No.1 lost his temper and told that he has got a valid Will and had already got the mutation sanctioned in his favour. Thereafter, plaintiff contacted Halqa Patwari and came to know that defendant No.1 got the mutation sanctioned in his favour.

It is the case of plaintiff that she is the member of Coparcenary Family and also natural legal heir and is entitled to 1/6 share of the property left by Rajinder Singh and the Will put by defendant No.1 is forged, fictitious and illegal on the following grounds:-

- i) That the suit property in the hands of Rajinder Singh was Joint Hindu Family Coparcenary Property in which plaintiff had vested interest since the date of her birth.
- ii) Rajinder Singh after retirement has lost his mental sense

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though he lived till 2014, he could not understand his good or bad after retirement as he suffered mental attack and as such, he could not have taken a rational decision. Thus, Will dated 06.03.2007 is not from the mouth of Rajinder Singh but is creation of defendant No.1.

iii) Rajinder Singh had full love and affection with plaintiff, his daughters and his wife Parkash kaur and as such, he could not have ignored them.

iv) At the time of mutation, plaintiff was not given a notice and mutation sanctioned in the absence of natural legal heirs shows fraudulent intention.

Now, defendant No.1 intends to sell away the property and if he succeed to do so, then plaintiff shall suffer irreparable loss. As such, defendants be restrained from alienating the suit property. Hence, suit and present application.

3. Upon notice, defendants caused appearance and contested the suit and present application through counsel by filing written statement wherein it has been submitted by way of **preliminary objections** that suit is not maintainable; that plaintiff has no locus standi to file present suit and that suit is barred by the principle of estoppel.

On merits, it is submitted that plaintiff has not furnished complete pedigree table. Plaintiff had no share in the suit property in the existence of the Will. The plaintiff cannot claim any share out of the suit property in the presence of Will duly registered dated 06.03.2007. The suit property is not ancestral and coparcenary and Rajinder Singh had been occupying the property as a Trustee qua his natural heirs. The plaintiff has the knowledge

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of the Will on the basis of which mutation has been sanctioned. Plaintiff has the knowledge of the mutation from the date when same was sanctioned, hence, plaintiff has been estopped by her own act and conducted.

It is submitted that plaintiff never received any copy of the Will from defendant No.1 as she was already having the copy of the Will. She has no legal right in the suit property in the existence of the Will. She is having a greedy nature from the very beginning and had demanded Rs.2.5 Lakhs from defendant Nos.1 and 2 after the death of Rajinder Singh and defendant No.1 had given this amount to plaintiff. Plaintiff had been demanding the money from defendants and defendants gave money to her on different occasions. Only when defendant Nos. 1 and 2 refused to give money, then the present suit has been filed.

It is further submitted that plaintiff had attacked and gave injuries to the wife of defendant No.1 prior to the *Barsi* of Rajinder Singh. The plaintiff never contacted Halqa Patwari and the plaintiff has no where mentioned the date, month and year when plaintiff contacted the Patwari and when she came to know about the Will. Plaintiff is having knowledge of the mutation since the date when the same was sanctioned. The rates of the property has been increased and the present suit is outcome of greedy nature of plaintiff. All other averments were denied and prayer is made for dismissal of application.

4. In replication, the objections taken by defendants in written statement were denied and the contents of plaint were reiterated to be true and correct.

5. Heard. The arguments were in consonance of the pleadings of the parties.

6. By way of present application plaintiff seeks the indulgence of the

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Court to restrain defendants from alienating the suit property.

Plaintiff avers that she is the Member of Joint Hindu Family and as such she is having 1/6 share in the ancestral property left by deceased Rajinder Singh.

On the other hand, defendants have averred that the suit property is not ancestral property and Rajinder Singh had executed a Will dated 07.03.2007 in favour of defendant No.1. Hence, plaintiff has no legal right in the suit property in the presence of Will.

Undisputably, plaintiff is the daughter of Rajinder Singh and hence a part of Hindu Joint Family. Vide Mutation No.4034, Rajinder Singh along with his other relatives had inherited the suit property from his father. Meaning thereby that the property of Rajinder Singh was not his self-acquired but he had inherited it from his father Jagat Singh. The property from Rajinder Singh to defendant No.1 has been mutated vide mutation No.35692. The said mutation is on the basis of Will dated 06.03.2007 which is duly registered document. It is a settled law that one who relies upon a Will has to prove the same. In the case in hand, the onus is on defendant No.1 to prove the Will. At this stage, prima facie ancestral nature of suit property is duly proved. If defendant No.1 succeeds to alienate the suit property, then same will lead to multiplicity of litigation and he will suffer irreparable loss.

In view of foregoing, plaintiff has a prima facie case in her favour and balance of convenience also lies in her favour. As such, present application is allowed to the effect that defendant No.1 is restrained from alienating the suit property, during the pendency of present suit. Application in hand stands disposed of accordingly.

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7. Observations made in this order shall have no bearing on the decision of the suit on merits.

8. Parties have been directed to place on record proposed issues. But learned counsel for the parties have stated that no proposed issues arise. Heard. From the pleadings of the parties, following issues are framed as under:-

- (i) **Whether plaintiff is entitled for the relief of Declarations as prayed for?OPP**
- (ii) **Whether plaintiff is entitled for the relief of Permanent Injunction as prayed for? OPP**
- (iii) **Whether suit is not maintainable in present form?OPD**
- (iv) **Whether plaintiff has no locus standi to file present suit?OPD**
- (v) **Whether plaintiff is estopped by her act and conduct from filing the present suit?OPD**
- (vi) **Relief.**

No other issue arises or even pressed. For evidence of the plaintiff to come up on 10.09.2019. PF/DM/Documents/List of witnesses be filed within 07 days. Affidavit of plaintiff and her witnesses be placed on the Court file and their copies be simultaneously supplied to the opposite counsel 07 days earlier to the date fixed, so that the opposite counsel is able to prepare his cross-examination and does not seek a date for cross examination.

Pronounced in open Court.
Date of Order: 20.08.2019
(Sumit Kumar)
Stenographer Gr-II

(Ashima Sharma)
Civil Judge (Jr. Divn)
(UID : PB – 0548)
Kharar.