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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO-27-2025 (O&M)
Date of decision : 10.01.2025**

HARBANS SINGH

....Appellant

Versus

RAJ KAUR AND OTHERS

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vivek Salathia, Advocate
for the appellant.

PANKAJ JAIN, J. (ORAL)

Instant appeal is directed against order dated 05.11.2024 passed by Additional District Judge, SAS Nagar.

2. The dispute relates to estate left by Ram Singh, the predecessor-in-interest of the parties.

3. Plaintiff Raj Kaur filed suit seeking declaration along with consequential relief of permanent injunction asserting her right over 1/7th share in the estate left by Ram Singh. The suit was contested by appellant Harbans Singh, who propounded registered Will dated 07.08.2018 executed by Ram Singh. Appellant along with Surjit Singh the other brother, are the beneficiaries.



4. Along with the plaint an application was filed under Order 39 Rule 1 & 2 CPC seeking temporary injunction against the defendants from alienating the suit property in any manner.

5. The aforesaid application was declined by the Trial Court holding that the Will propounded by defendants, dated 07.08.2018, was a registered Will. The genuineness as well as the legality thereof, is yet to be breached by the plaintiff by leading cogent evidence. Registered document carries *prima facie* probative value and thus, *prima facie* case being in favour of the defendants, plaintiff was not entitled to temporary injunction.

6. In appeal preferred by the plaintiff, order passed by the Court of First Instance on application under Order 39 Rule 1 & 2 stands reversed. Appellate Court held that the genuineness of the Will has been disputed. Plaintiff has pleaded suspicious circumstance surrounding the Will, which includes cloud over the sound disposing mind of the executant and, thus, the plaintiff was entitled to temporary injunction to the extent of her 1/7th share in the suit property.

7. Mr. Salathia while assailing the impugned order passed by Additional District Judge, SAS Nagar submits that the Lower Appellate Court fell in error in ignoring the fact that after the defendants propounded registered Will in their favour, there was *prima facie* case in favour of the defendants and not in favour of the plaintiff. Plaintiff in order to succeed in an application filed under Order 39 Rule 1 & 2 CPC was necessarily



required to show some *prima facie* case. Trial Court rightly found *prima facie* case in favour of the defendants on the strength of registered Will and denied temporary injunction to the plaintiff. The order passed by the Lower Appellate Court whereby the order passed by the Trial Court has been reversed being without any reasoning, cannot be sustained.

8. I have heard counsel for the appellant and have carefully gone through records of the case.

9. In order to appreciate the argument raised by counsel for the appellant, it will be apt to peruse provisions as contained under Order 39 Rule 1 & 2 CPC, which read as under :

ORDER XXXIX

TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

Temporary injunctions

1. Cases in which temporary injunction may be granted.—

Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to 3 [defrauding] his creditors,

4[(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property 5 [or dispossession of the plaintiff, or



otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach.—(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained, of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

1* * * * *

1[2A. Consequence of disobedience or breach of injunction.—(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.]



10. Scope of Order 39 CPC includes protection of property pending *lis*. As per settled law, the adjudicating Court needs to test the case of the plaintiff seeking temporary injunction on the touchstone of following parameters:

- (i) *Prima facie* case;
- (ii) Irreparable injury, and
- (iii) Balance of convenience

11. At interim stage, applicant need not make out a clear legal right. He is required to satisfy the Court that he has the fair issue to raise regarding existence of a legal right in his favour. Where such legal right being asserted is not disputed, the applicant/plaintiff must show that the act complained of by him, is in fact in violation of his undenied legal right. Law further requires applicant to show that the interference by the Court is necessary to protect him from injury which is irreparable i.e. the injury is one of the species which cannot be adequately remedied by damages. Further burden lies upon plaintiff to show that his inconvenience exceeds that of defendant. He needs to make out a case of comparative inconvenience which would entitle him to interference by the Court. As per 'A Treatise on the Law and Practice of Injunctions' by Kerr, 6th Addition, Page 25 "*in balancing the comparative convenience or inconvenience from granting or withholding an injunction, the Court will take into consideration what means it has*



of putting the party who may be ultimately successful in the position he would have stood if his legal rights has not been interfered with”.

12. Law w.r.t. Will stands settled by Supreme Court in the case of **‘H. Venkatachala Iyengar vs. B.N. Thimmajamma and others, AIR 1959 Supreme Court 443** holding that mere registration of Will does not prove legality and genuineness thereof. Wherever party opposing the Will, spells out suspicious circumstance, the onus lays heavily upon the propounder of the Will to dispel those suspicious circumstance.

13. Gazing the facts of present case from prism of afore-stated proposition, relationship between the plaintiff and late Ram Singh whose estate is in dispute is admitted. Plaintiff has brought on record suspicious circumstance questioning the sound disposing mind of the executant of the Will. This Court has no doubt that in case the plaintiff succeeds, she will be entitled to succeed to the estate of Ram Singh. In order to secure the interest of the plaintiff, property needs to be preserved. In case, the defendants are allowed to alienate the property during the pendency of the *lis*, plaintiff is bound to suffer irreparable loss which will only lead to multiplicity of the litigation which cannot be compensated in terms of money.

14. In view of above, this Court finds that all the three necessary ingredients for grant of temporary injunction being in favour of the plaintiff, Lower Appellate Court rightly granted temporary injunction in her favour injuncting defendants No.1 & 2 from transferring or alienating the property



left by Ram Singh to the extent of 1/7th share. Resultantly, finding no merits in the instant appeal, the same is ordered to be dismissed.

15. Pending application(s), if any, shall also stand disposed off.

January 10, 2025

(Pankaj Jain)

Dpr

Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes