

(2022-4)208 PLR 747

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Manjari Nehru Kaul.

KAMALBIR SINGH – Petitioner,

Versus

NARBIR SINGH and others – Respondents.

CR No.1424 of 2022 (O&M)

(i) Civil Procedure Code, 1908 (V of 1908) Order 39, Rules 1, 2 - Revisional jurisdiction, when both the Courts below have dismissed an application under Order 39 Rules 1 and 2 [CPC](#) - It is well settled that an order allowing or dismissing an application for grant of temporary injunction must be an outcome of sound exercise of discretion by the Courts - This Court would loathe to interfere in such exercise of discretion by the courts below, unless and until it is shown that the Courts below have acted in an arbitrary, unreasonable or erroneous manner, or have ignored the relevant facts while exercising their discretion and jurisdiction. [Para 11]

(ii) Civil Procedure Code, 1908 (V of 1908) Order 39, Rules 1, 2 - Will -Will in question is a registered document - Under what circumstances the Will in question was registered manually and not digitally, cannot be delved into at this stage - The petitioner has failed to bring to the notice of this Court any relevant rules or directions of the authorities concerned which would make the registration of a Will through computerized digital mode mandatory.

[Para 16]

(iii) Civil Procedure Code, 1908 (V of 1908) Order 39, Rules 1, 2 - Plea that thumb-impressions of the testator on the alleged Will were clearly smudged and indecipherable, no independent witness had attested the Will, was not in digital mode and that all these circumstances when seen in totality, raises a big question about the authenticity and genuineness of the Will in question - Prima facie the petitioner, as per the record, is shown to have been represented by a counsel before the revenue authority concerned - Also filed his power of attorney bearing the signatures of the petitioner - Whether the said counsel had been authorized or not, or whether the signatures on the power of attorney were forged or genuine, would be a matter of appreciation during trial - Since petitioner is shown to have participated in the partition proceedings, therefore, the onus to prove to the contrary would also rest on him - Can only be decided by evidence - At this preliminary stage, the courts below cannot be faulted with for leaning in favour of the validity of the partition proceedings as they were carried out by the revenue authorities in discharge of their official duties and hence presumption of correctness would be attached to them. [Para 14]

Cases referred to:-

1. (2005-1)139 PLR 399 (SC), *Maharwal Khewaji Trust (Regd.), Faridkot v. Baldev Dass*.
2. (2009)11 SCC 229, *Kishorsinh Ratansinh Jadeja v. Maruti Corporation*.
3. CR 4549 of 1997 dd. 06.03.2000, *Bachan Singh v. Swaran Singh*.
4. (2009)12 SCC 776, *Ece Industries Ltd. v. S.P. Real Estate Developers Pvt. Ltd.*
5. AIR 1973 SC 76, *Managing Director Hindustan Aeronautics Ltd. v. Ajit Prasad Tarway*.

Mr. Amit Jain, Senior Advocate for the petitioner. Mr. Amit Jhanji, Senior Advocate with Ms. Zaheen Kaur, for respondents No.1 and 9. Mr. R.S. Rai, Senior Advocate with Mr. Kunal Dawar and Ms. Rubina Virmani, for respondents No.2 to 7.

Manjari Nehru Kaul, J. - (*Reserved on : 30th August, 2022 Pronounced on : 13th September, 2022*) - The instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 01.11.2021 passed by Civil Judge (Junior Division), Gurugram, which was upheld by the lower appellate Court vide order dated 31.03.2022.

2. Mr. Amit Jain, learned senior counsel for the petitioner contends that it was a matter of record that service upon the petitioner in the partition proceedings was not effected and infact the aforementioned proceedings were carried out behind his back. He argued that in the partition proceedings, the petitioner was initially proceeded against ex-parte vide order dated 11.10.2013, which was ater set aside vide order dated 17.11.2016, on a handwritten application moved by an Advocate who had not even been engaged by the petitioner. He further contends that on 16.01.2017 Sanad Takseem was ordered to be prepared on the basis of a consent statement made by the same Advocate, who put in an appearance on behalf of the petitioner without being appointed by him. While drawing the attention of this Court to the application filed by the Advocate for setting aside the ex-parte order (Annexure P3) and the power of attorney (Annexure P4), learned senior counsel vehemently contends it is clear even to the naked eye that the alleged signatures of the petitioner on both these documents do not match with his actual signatures.

3. While inviting attention of this Court to the Rapat Roznamcha No.864 annexed as Annexure P5, learned senior counsel submits that strangely date of the order vide which the warrants of possession qua the land in dispute were issued by the Assistant Collector, Second Grade has not been mentioned therein. He thus, submits that the collusion between the private defendants and the defendant-revenue authorities is further apparent and discernible from the fact that when the petitioner applied for obtaining certified copies of the files of partition proceedings, his application was returned with the report that there were no entries with respect to those case files in the register. Learned senior counsel submits that interestingly, the respondents produced the certified copy of the files of partition proceedings along with their written statements.

4. Learned senior counsel further vehemently argues that the alleged Will dated 06.08.2015 was shrouded in suspicious circumstances as there was ample evidence on record to show that Murti Devi was suffering from serious ailments, and hence, she was not

in a sound disposing mind to execute the alleged Will. He submitted that in the circumstances, it could not be said that Murti Devi executed the said Will on 06.08.2015 out of her free will and in full consciousness, as she was bedridden and suffering from several medical ailments. Learned counsel, in support, has invited the attention of this Court to the medical record of Murti Devi (Annexure P8) as per which Murti Devi remained admitted in the hospital for almost three months, from 20.06.2015 to 11.09.2015. Learned senior counsel further vehemently submits that the Courts below failed to consider that the alleged Will was registered manually despite the fact that all the documents now-a-days are being registered digitally through computers. He has also argued that the thumb-impressions of the testator on the alleged Will were clearly smudged and indecipherable, along with the fact that no independent witness had attested the Will. He thus, submits that all these circumstances when seen in totality, raises a big question about the authenticity and genuineness of the Will in question.

5. He still further submits that the respondents had obtained a license from the Department of Town and Country Planning, Haryana for setting up an affordable plotted colony on specific Khasra numbers out of the joint land. He submits that the respondents were in the process of changing the nature of the suit property. Hence, if they were not restrained from doing so, the plaintiff/petitioner would suffer irreparable loss. Learned senior counsel vehemently prays and urges that in light of the aforementioned facts and circumstances, alongwith the fact that plaintiff was a co-sharer in the joint land, not only a prima facie case was made out but even balance of convenience lay in favour of the plaintiff. Learned senior counsel, in support, placed reliance upon '*Maharwal Khewaji Trust (Regd.) v. Faridkot v. Baldev Dass*'¹ (2005-1)139 PLR 399 (SC).

6. *Per contra*, while opposing the prayer and submissions made by learned senior counsel opposite – Mr. Amit Jhanji, learned senior counsel appearing on behalf of respondents No.1 and 9 has vehemently contended that the petitioner, in his plaint, has not even uttered by way of a whisper that the power of attorney (Annexure P5) was a forged document, or that he had not engaged the counsel who put in an appearance on his behalf before the Revenue Authorities in the partition proceedings. Learned senior counsel has argued that since there were no specific pleadings alleging fraud in the partition proceedings, therefore, in view of the provisions of Order VI Rule 4 CPC, no evidence could be led to prove the same. He vehemently argues that the petitioner has come up with an altogether new and different story before this Court, which is beyond his pleadings. He further submits that the petitioner had in fact participated in the partition proceedings which is evident from its record as even the Sanad Taqseem was prepared with his consent. Learned senior counsel submits that even otherwise as per settled law no injunction could be granted against a co-owner. Furthermore, learned senior counsel submits that the Department of Town and Country Planning, Haryana had granted license for developing an affordable plotted colony over the land owned by respondent No.8, therefore, no injunction could be granted qua the said project in view of the bar created by Section 41(ha) of the

Specific Relief Act, to grant an injunction against infrastructure projects.

7. Learned senior counsel still further submits that the Will dated 06.08.2015 was a registered document executed by Murti Devi out of her own free will and in sound disposing mind. The said Will had been attested by one of the daughters of the testator. Therefore, the submission made by the learned senior counsel for the petitioner that the Will was shrouded in suspicion, was meritless. He submitted that the petitioner was well aware about the execution of the Will, however, for reasons best known to him he chose to remain mum and it was only now that he had chosen to challenge it after a delay of six years. In support of his submissions, learned senior counsel has placed reliance upon '*Kishorsinh Ratansinh Jadeja v. Maruti Corporation and Ors.*'² (2009) 11 SCC 229; '*Bachan Singh v. Swaran Singh*'³ CR 4549 of 1997 dd. 06.03.2000; and '*Ece Industries Ltd. v. S.P. Real Estate Developers Pvt. Ltd. and Anr.*'⁴ (2009) 12 SCC 776.

8. Mr. R.S. Rai, learned senior counsel representing respondents No.2 to 7 contends that since the petitioner is challenging the partition by revenue authorities, therefore, the jurisdiction of the Civil Courts to entertain the matter would be barred under Section 158 of the Punjab Land Revenue Act, particularly when no fraud has been alleged in the plaint qua the partition proceedings. Learned senior counsel submits that it is a matter of record that the petitioner has not filed any criminal complaint till date against the Advocate, who allegedly appeared on his behalf during the partition proceedings.

9. While rebutting the submissions made by learned senior counsel representing respondents No.1 and 9, Mr.Amit Jain, learned senior counsel for the petitioner has argued that the application for setting aside ex-parte proceedings (Annexure P3) and the power of attorney (Annexure P5) were not even within the knowledge of the petitioner, as he had not been supplied with the certified copies of the partition proceedings, and it was only when the written statement was filed by the defendants that the said facts came to light and to his notice. While inviting the attention of this Court to the plaint, learned senior counsel has rebutted the submissions made by the counsel opposite and submits that the petitioner had specifically alleged fraud in para Nos.5 and 6 of the plaint. Still further, he has argued that as per the provisions under Order VI Rule 2 CPC, the plaintiff was only required to state the material facts in his plaint and not detail the evidence on which he was relying upon. He furthermore, submitted that Section 41(ha) of the Specific Relief Act would not be applicable in the case in hand as respondent No.8 was a private builder and carrying out the project for making profits. He thus, vehemently prays for setting aside the impugned order by urging that in the absence of an injunction at this stage, even if the petitioner is able to prove his case at the conclusion of the trial, it would be of no avail to him, as by then the respondents would have changed the nature of the suit property to the detriment of the petitioner and also would have created third party interests.

10. I have heard learned counsel for the parties and perused the relevant material on record.

11. Before proceeding further, it would be relevant to discuss the scope of the revisional

jurisdiction of this Court, when both the Courts below have dismissed an application under Order 39 Rules 1 and 2 CPC. It is well settled that an order allowing or dismissing an application for grant of temporary injunction must be an outcome of sound exercise of discretion by the Courts. This Court would loathe to interfere in such exercise of discretion by the courts below, unless and until it is shown that the Courts below have acted in an arbitrary, unreasonable or erroneous manner, or have ignored the relevant facts while exercising their discretion and jurisdiction.

12. The Court of superior jurisdiction can neither delve into reappreciation of the material on record, nor arrive at a conclusion contrary to the one arrived at by the courts below, when the conclusion so arrived at by the courts below was reasonably possible on the basis of the material on record. If it is shown that the courts below have not exercised their discretion in a reasonable and judicious manner, only then this Court in the exercise of its revisional jurisdiction would be justified to interfere. In such circumstances, this Court would be duty bound to correct the wrongful and improper approach of the courts below. The Hon'ble Supreme Court in '*Managing Director Hindustan Aeronautics Ltd. v. Ajit Prasad Tarway*' ⁵ AIR 1973 SC 76 has held that the High Court would not be justified in interfering even if order of the trial Court is right or wrong; or in accordance with law or not, unless it has exercised its jurisdiction illegally or if there is some material irregularity.

13. Adverting to the case in hand, the petitioner has challenged the partition proceedings carried out by the authorities concerned in case titled '*Karambir etc. v. Narbir*' bearing No.34/NT and 33/NT decided on 11.06.2019. The petitioner has also challenged the registered Will dated 06.08.2015 executed by his mother Murti Devi.

14. The submissions made by the learned senior counsel for the petitioner do sound attractive at the first instance, however, this Court cannot lose sight of the fact that prima facie the petitioner, as per the record, is shown to have been represented by a counsel before the revenue authority concerned. The said counsel, while causing appearance on behalf of the petitioner, had also filed his power of attorney bearing the signatures of the petitioner. Whether the said counsel had been authorized or not, or whether the signatures on the power of attorney were forged or genuine, would be a matter of appreciation during trial. Since the petitioner is shown to have participated in the partition proceedings, therefore, the onus to prove to the contrary would also rest on him. It goes without saying that these questions can only be decided once the parties lead their respective evidence. Therefore, at this preliminary stage, the courts below cannot be faulted with for leaning in favour of the validity of the partition proceedings as they were carried out by the revenue authorities in discharge of their official duties and hence presumption of correctness would be attached to them. The courts below have rightly observed that till the said proceedings are not declared void, a presumption of correctness, shall be attached to them.

15. The other submission which has been raised by the learned senior counsel for the petitioner is qua the Will dated 06.08.2015 being shrouded in suspicious circumstances.

16. In the considered opinion of this Court, merely because the Will in question was

registered manually and not digitally, cannot by itself be a ground to question its genuineness at the stage of deciding an application under Order 39 Rules 1 and 2 CPC. The fact of the matter is, that the Will in question is a registered document. Under what circumstances the Will in question was registered manually and not digitally, cannot be delved into at this stage. Further, learned senior counsel for the petitioner has failed to bring to the notice of this Court any relevant rules or directions of the authorities concerned which would make the registration of a Will through computerized digital mode mandatory.

17. Furthermore, whether Murti Devi was actually in a sound disposing state of mind or not, at the time of the execution of the Will in question would only be determined on appreciation of evidence to be led by the parties before the trial Court. Still further, learned senior counsel for the petitioner has also not been able to controvert the fact that one of the attesting witnesses of the Will is none other than the sister of the petitioner. Other than these assertions, the petitioner has not placed anything on record to rebut the presumption qua the valid execution of a registered document. In the circumstances as enumerated hereinabove, the courts below cannot be said to have acted in an arbitrary and unreasonable manner while refusing to grant temporary injunction.

18. As a sequel to the above, this Court does not find any illegality or material irregularity in the impugned orders. The petition being devoid of any merit stands dismissed.

19. However, keeping in view the nature of the housing project being developed by the private respondents, which may lead to multiplicity of proceedings, this Court deems it appropriate to direct the respondents to inform the trial Court in case they wish to alienate or create third party rights/interests in the suit property. Further, the respondents shall be bound to disclose about the pendency of the suit in question while executing any transfer deed (sale deed, gift deed, mortgage deed etc.) in favour of a third party by way of a recital to the said effect therein.

Nothing contained herein shall be deemed to be an expression of opinion on the merits of the case.

R.M.S. – Revision dismissed.