

**IN THE COURT OF SH. GURKIRAN SINGH, PCS, CIVIL JUDGE
(JR. DIVISION), CHANDIGARH.**

Civil suit no. 827/2015
Date of order: 20.04.2017
Pending for: 30.05.2017

Dr. Vasdev Singh Versus Inderdev Singh & Ors.

Application under Order 39 Rule 1 and 2 CPC, praying for temporary injunction restraining the defendant no. 1 to 3 from alienating the suit property in any manner including but not limited to Mortgage/Sale/Gift/etc. And from creating any charge thereon and for restraining defendants no. 4 to 10 from transferring the rights in any of the suit properties in favour of defendant no. 1 to 3 till the time the present suit is pending before this Hon'ble Court.

Present: Sh. Pankaj Jain, counsel for the plaintiff
Sh. Vaneesh Khanna, counsel for defendant no. 1 and 3
Ms. Preeti Nigam, counsel for defendant no.2
Defendant no.6 in person.
Defendant no. 4 and 5 exparte
Sh. Ashwani talwar, counsel for defendant no.7
Sh. SC Mehta, counsel for defendant no. 8 and 9
Sh. Vansh Malhotra, counsel for defendant no. 10
Sh. Vinod Verma, counsel for defendant no.11

ORDER:

1. This order of mine shall dispose of application under Order 39 Rule 1 and 2 CPC filed by the plaintiff/applicant praying that defendant no. 1 to 3 be restrained from alienating the suit property in any manner and from creating any charge over the same and further for restraining the defendant no. 4 to 10 from

transferring the rights in the suit property in favour of defendant no.1 to 3 till final disposal of the present case.

2. Briefly, the plaintiff has stated that the father of the plaintiff and defendant no. 1 namely Dr. Kartar Singh Rai inherited a part of the ancestral land from his father through a court decree. The land in the hands of Dr. Kartar Singh Rai at Nurpur was ancestral land. Thereafter, Dr. Kartar Singh Rai purchased residential House No. 514, Sector 8-B, Chandigarh from the income of the aforesaid ancestral land. The said Kartar Singh Rai alongwith his sons i.e., plaintiff and defendant no.1 had constituted Hindu Undivided Family namely Kartar Singh Rai and he was managing the affairs of Hindu Undivided Family property as a Karta. Plaintiff went to America in the year 1973 and used to visit his family and properties quite often. Dr. Kartar Singh Rai was managing the properties in India with the help of defendant no.1. The said Dr. Kartar Singh Rai was Manager of immovable properties mentioned in Schedule A attached with the plaint and he also owned movable properties as mentioned in Schedule B attached with the plaint. Dr. Kartar Singh had sold some ancestral properties as well and had obtained the income from other ancestral properties and thereafter he had acquired some properties as mentioned in Schedule C of the plaint. The said properties mentioned in Schedule A to C are all ancestral properties of the plaintiff as well as defendant no.1. Defendant no.1 to 3 have been recorded as co-owners of the said properties by taking benefit of the absence of the plaintiff. Neither of the defendant no.1 to 3 had contributed nor they had any means to contribute for the purchase of the properties mentioned in Schedule C. The said Kartar Singh Rai died on 01.04.2015 and left behind his two sons i.e. plaintiff

and defendant no.1. Even the plaintiff participated in the last rights of his father. The defendant no.1, after 6 days of the death of his father, tried to dispossess the plaintiff from House No. 514, Sector 8-B, Chandigarh claiming himself to be absolute owner of the properties left behind by said Kartar Singh Rai. The defendant no.1 is trying to exclude the plaintiff from the benefit of Joint Hindu Family Property as well as its income. Defendant no.1 was asserting his rights over all the properties of Hindu Undivided Family on the strength of some Will whereas the said Will is a forged document as no Will was executed by Kartar Singh Rai regarding the property in dispute. Hence, the plaintiff filed the present application praying that the injunction be granted against the defendants.

3. Upon notice defendant no. 1 to 3 filed their written statement and reply wherein it has been mentioned that the plaintiff is no more a member of Hindu Undivided Family. It has been averred that the HUF namely Kartar Singh Rai was dissolved by oral family settlement between Kartar Singh and his sons. Dr. Kartar Singh Rai HUF came into existence on 30.05.1968. Defendant no. 1 alongwith plaintiff and Dr. Kartar Singh Rai had acquired 1/3rd share each in the said HUF till 04.10.2010. On 04.10.2010 the oral family settlement took place and plaintiff separated himself from the Joint Family Property of Dr. Kartar Singh Rai HUF as he had taken away his share from the said properties. Defendant no. 1 to 3 admitted that the property in dispute was earlier owned by their grand father Gian Singh who was the original allottee. The defendant no. 1 admitted that the property in dispute was transferred in the name of Dr. Kartar Singh Rai by way of a decree in the year 1969 which was passed to confirm the oral family settlement between Gian Singh and his sons. It has been averred that

Dr. Kartar Singh Rai had acquired plot no. 411, Lajpat Nagar, Jalandhar on the basis of family settlement dated 30.05.1968 in the name of the plaintiff in lieu of 2 acres of land deducted from the share of Dr. Kartar Singh Rai. After execution of oral family settlement entered between late Kartar Singh, plaintiff and defendant no. 1 on 04.10.2010, the land at village Nurpur became exclusive property of Kartar Singh and was no more an ancestral property. The defendant no. 1 denied that the House No. 514, Sector 8-B, Chandigarh was purchased by Kartar Singh from income of ancestral land and averred that the same has been purchased from the personal income of said Kartar Singh on 15.02.1961. Even the construction was raised by obtaining loan by way of mortgage deed dated 14.09.1961 with the Government. The completion certificate of the house in dispute was obtained by Kartar Singh on 09.07.1962 whereas the Hindu Undivided Family of Kartar Singh was incorporated on 30.05.1968. It has been denied that Dr. Kartar Singh Rai had purchased house no. 514 Sector 8B Chandigarh from income of ancestral land. The defendant no. 1 to 3 stated that the Bank accounts and movable properties mentioned in Schedule B are HUF properties except savings bank account no. 06001000021036 and fixed deposits and Punjab and Sind Bank Sector 17 B Chandigarh and mutual funds. They admitted that the properties mentioned in Schedule C were thrown in one half share in the HUF by Kartar Singh Rai and the detail mentioned in the same are not correct. It has been stated that the properties mentioned in the Schedule A to C are not HUF properties and were owned by Dr Kartar Singh Rai himself after the oral settlement. Dr. Kartar Singh Rai was very much capable of executing will regarding the properties in dispute.

4. Written statement on behalf of respondent no. 6 was also filed and bank details of account no. 1724339 and 1722219 were mentioned to be of Kartar Singh Rai alongwith Harbinderjit Kaur and Indev Singh respectively. Defendant no. 8 and 9 also filed the written statement wherein they averred that they are trying to obtain permissions from the authority to develop a shopping Mall cum multiplex to be known as "City Emporio Mall". Deceased Kartar Singh Rai alongwith Inder Singh Rai defendant no.1 had entered into space buyer agreement for allotment of a shop in the said mall and a memorandum of understanding has also been executed. It has been stated that no cause of action arises against defendant no. 8 and 9 and they are only unnecessary party. Defendant no. 12 also filed its reply denying the case of the plaintiff and stated that the residential unit No. E-1/301 was booked by Dr. Monika Jain and this booking was later purchased by Kartar Singh HUF and Kaur Inder Singh Rai by way of sale. The defendants prayed for dismissal of the present application.

5. Perusal of the file shows that in the present application the plaintiff is seeking injunction against defendant no. 1 to 3 from alienating the suit property in any manner and against defendant no. 4 to 10 for transferring the rights in the suit properties in favour of defendant no. 1 to 3. Perusal of the written statement of defendant no. 1 to 3 shows that the properties in dispute are not HUF properties now. But as per the record it is clear that the property mentioned in Schedule A were earlier owned by the said HUF. Out of Schedule A land falling in Khasra No. 11/11, 12,19, 20, 21 to 23, 27, 28, 12/16,(1) and 12/25 have already been sold by Kartar Singh Rai in his life time. Even the Khasra No. 8/19, 21/2, 22, 23 and 27 is not in the name of Kartar Singh Rai. These facts are

clear from Jamabandi for the year 2012-13 placed on the file. Therefore, the same cannot be considered to be a part of Kartar Singh Rai HUF. The remaining property as alleged by the plaintiff is undivided family property and the deceased Kartar Singh Rai could not have transferred the same in any manner. The defendant no. 1 to 3 on the other hand have stated that the said properties were self acquired property of kartar Singh Rai and he could have transferred the same as per his wishes because the HUF was dissolved and the plaintiff had taken away his share in the year 2010. The fact that the above said properties mentioned in Schedule A to C of the plaint are HUF or not can be proved after evidence is led by both the parties. It is after the evidence, that the parties will be able to prove that the properties in dispute fall within the HUF or not and also that whether the HUF still exists.

6. So in view of the above discussion this court is of considered view that till evidence is led by both the parties to prove the ownership of the properties in dispute, in order to protect the suit property, it would be necessary to keep the same intact. Therefore, both the parties are directed to maintain status quo regarding ownership and possession of the property in dispute as exists today till final disposal of the present case except properties falling in Khasra No. 11/11, 12,19, 20, 21 to 23, 27, 28, 12/16,(1) and 12/25 and Khasra No. 8/19, 21/2, 22, 23 and 27 mentioned in Schedule A as the same are not in the name of Kartar Singh Rai. Accordingly, present application is disposed of.

6. However, any observation made while disposing of this application shall have no bearing on the merits of the main case.

Pronounced in open court:

(Gurkiran Singh)

20.04.2017

Civil Judge(Jr. Division)
UID No. PB412
Chandigarh

Manju
Stenographer Gr. II

Vasudev Singh Versus Inderdev Singh

Present: Sh. Pankaj Jain, counsel for the plaintiff
 Sh. Vaneesh Khanna, counsel for defendant no. 1 and 3
 Ms. Preeti Nigam, counsel for defendant no.2
 Defendant no.6 in person.
 Defendant no. 4 and 5 ex parte
 Sh. Ashwani talwar, counsel for defendant no.7
 Sh. SC Mehta, counsel for defendant no. 8 and 9
 Sh. Vansh Malhotra, counsel for defendant no. 10
 Sh. Vinod Verma, counsel for defendant no.11

Arguments heard on application under Order 39 Rule 1 and 2 CPC.

Vide separate detailed order of even date, the present application stands disposed of as stated therein. From the pleadings of the parties, following issues are framed as under:

1. Whether the Plaintiff is entitled to relief of possession of ½ share in the suit property by way of partition as prayed for?OPP
2. Whether the plaintiff is entitled to relief of declaration as prayed for?OPP
3. Whether the palintiff is entitled for the relief of rendition of accounts as prayed for?OPP
4. Whether the present suit is bad for non joinder of necessary parties?OPD
5. Whether the present suit is barred by limitation?OPD
6. Whether the present suit is not maintainable in the present form?OPD
7. Whether the plaintiffs have not approached the court with clean hands? OPD
8. Whether the plaintiff has no locus standi and cause of action to file the present suit?OPD
9. Relief.

No other issue is arises or pressed. To come up on 30.05.2017 for plaintiff evidence. PF,DM and list of witnesses be filed within seven days.

Pronounced in open court:
20.04.2017

(Gurkiran Singh)
Civil Judge(Jr. Division)
UID No. PB412
Chandigarh