IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.4035 of 2014 (O&M)
Date of Decision: 10.11.2014

Mahabir Parshad

...Petitioner

Versus

Kanwar Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Vikram Singh, Advocate
for the petitioner.

R.P. Nagrath, J.

The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India challenging the orders dated 18.11.2013 and 02.04.2014 passed by the Courts below dismissing the application filed by the petitioner for ad-interim injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure with a prayer to restrain the defendant from alienating the property in question during pendency of the suit.

The estate of Chanderbhan devolved to his three sons, namely, Kanhiaya, Nobat and Bhawani. Petitioner is the son of Kanhiaya and he inherited 1/3rd share of his father. Kanhiaya allegedly died on 24.9.1984. The share which Nobat Ram

inherited is in question in the suit filed by the petitioner. It was also averred by the petitioner that he inherited the estate of Nobat son of Chanderbhan on the basis of a Will dated 20.8.1990 allegedly executed by Nobat in his favour. In the suit for declaration claiming 2/3rd share in the entire property, prayer in the application was made for restraining the respondents from alienating the property in question during pendency of the suit.

The learned trial Court discussed the facts of the case and found that no prima-facie case exists in his favour and the facts were further meticulously examined by learned Appellate Court and found no ground to interfere in the discretion exercised by the trial Court.

Having heard learned counsel for the petitioner at considerable length, I find no merit in the instant petition as all the necessary aspects for grant or refusal to grant injunction were considered by both the Courts below.

It is quite relevant to notice that in a civil suit filed by the petitioner against Nobat, the consent decrees dated 28.7.1990 and 22.8.1990 were passed. Nobat during his life time challenged the aforesaid judgements/decrees in Suit No.1019/5.10.1990. Nobat died during the pendency of the suit on 17.7.1996. His brother Bhawani and sister Nihali were impleaded as legal representatives of Nobat Ram in the suit. The consent decrees were set aside for want of registration on 11.3.1997. That judgement was upheld upto the Hon'ble Supreme Court. Now the petitioner is coming on the

strength of a Will dated 20.8.1990 allegedly executed by Nobat in his favour. Nobat was the paternal uncle of petitioner-plaintiff as well as that of respondents No.1 and 2 who are sons of Bhawani son of Chanderbhan and respondent No.3 is daughter of Chanderbhan.

The lower appellate Court observed as under:-

"13. Importantly, it is obvious, that the plaintiff had claimed the abatement of the suit, on the basis of will in question when Nobat died during the pendency of the suit, thereafter, the plaintiff had filed Civil Suit No. 277 of 2001 which had been dismissed, vide judgment and decree, dated 17.11.2005 passed by the court of Sh. Chanderhass, Civil Judge (Jr. Divn.), Mohindergarh, even civil appeal No. 243 of 2005 had also been dismissed by the court of Sh. R. S. Bagri, ADJ, Narnaul, vide Judgment, dated, 20.11.2008.

14. Besides, it is note worthy, that what to talk to disclose the factum of that suit by the plaintiff, even had failed to state the will in question in that suit. In this suit the plaintiff has challenged the Mutation No. 5000 and 521 pertinently, sanctioned on dated 21.3.1997. Even before the filing of the suit no. 277 of 2001 there was no iota of word regarding challenge of this Mutation in that suit. Initially, the instant suit has been filed on 10.8.2013, undoubtedly, there is no limitation to challenge the mutation of inheritance. In this scenario, when the will

was well within the knowledge of the plaintiff, soon after the death of Nobat, plaintiff must have pleaded the same, at the earliest available opportunity. The plaintiff has not only suppressed, but also misrepresented them to a significant extent."

It cannot be prima-facie accepted that Nobat who himself filed the civil suit to challenge the consent decree obtained by the petitioner, could have executed the Will in favour of the petitioner. If there was any scope of execution of the Will that would have been cancelled by Nobat because he instituted the suit to challenge the consent decrees allegedly suffered by him.

In the absence of any Will even defendant No.3 Nihali was only legally entitled to succeed the estate of Nobat. There is no scope of interference in the impugned judgements of the Courts below in refusing to grant ad-interim injunction.

Dismissed.

(R.P. Nagrath)
Judge

10.11.2014
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