

(1999) 03 P&H CK 0026

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 5828 of 1998

Sukhbir

APPELLANT

Vs

Smt. Maya

RESPONDENT

Date of Decision: March 17, 1999

Acts Referred:

- Hindu Succession Act, 1956 - Section 8

Citation: (1999) 123 PLR 189 : (1999) 3 RCR(Civil) 242

Hon'ble Judges: T.H.B. Chalapathi, J

Bench: Single Bench

Advocate: Adarsh Jain, for the Appellant; R.K. Jain, for the Respondent

Final Decision: Dismissed

Judgement

T.H.B. Chalapathi, J.

This revision is filed against the order of the learned District Judge, Faridabad, granting ad-interim injunction to the appellants.

2. The brief facts that led to the filing of this revision petition, may be stated as follows :-

One Net Ram had 3 sons including Aidal Chand. Aidal Chand died leaving behind his widow Maya and son Sushant minor. The plaintiffs are Sushant and Maya the legal heirs of Aidal Chand. Defendant No. 4 Net Ram who is the father of Aidal Chand, purporting to be the guardian of Sushant, leased out the property to defendants Nos. 1 to 3. That necessitated the plaintiffs to file the suit for injunction on the ground that they have been in possession of the suit property and that defendant No. 4 has no right to lease out the property to third parties, namely, defendants Nos. 1 to 3. Along with the suit, they applied for ad-interim injunction. The trial Court dismissed the application and declined the relief of temporary injunction pending disposal of the suit. On appeal, the learned District Judge granted temporary injunction till the disposal of the suit restraining defendants Nos. 1 to 3 from

interfering with the possession of the suit property. Aggrieved by the same, defendants Nos. 1 to 3 preferred this revision petition.

3. There is no dispute of the fact that Aidal Chand is the owner of 1/4th share and Net Ram leased out the specific 1/4th share in the entire family property to defendants Nos. 1 to 3. There cannot be any dispute of the fact that Net Ram is not the legal guardian of the minor son and he has no right to act on behalf of the minor in the presence of the natural guardian i.e. the mother who is plaintiff No. 2. He never sought to be appointed as guardian of the minor on the ground of remarriage of the plaintiff No. 2. Therefore, the lease in favour of defendants Nos. 1 to 3 by defendant No. 4 is not valid. Learned counsel for the petitioners further argued that the interest of plaintiff No. 2 Maya is adverse to the minor. Therefore, she cannot act as a guardian of plaintiff No. 1. According to him, earlier she filed a suit claiming a share in the property left by Aidal Chand. If she asserts her legal right, it cannot be said that the assertion of the legal right is adverse to the interest of the minor. There is no dispute of the fact that Aidal Chand died after Hindu Succession Act. u/s 8 read with the Schedule, both the widow and the minor son inherit the share of Aidal Chand. Therefore, Maya widow of Aidal Chand has got a statutory right to inherit the property. The assertion of that statutory right cannot be taken as adverse to the interest of the minor. That suit came to be filed when the property got mutated in favour of the minor to the detriment the rights of Maya widow of Aidal Chand. I do not, therefore, find any force in the arguments of the learned counsel.

4. Learned counsel for the petitioners further argued that Maya having been re-married, becomes divested from the property. But when the property has been vested, the re-marriage does not divest it. Reference may be made to the provisions of Section 5 of the Hindu Widows Re-Marriage Act, 1856. Therefore, re-marriage does not divest the plaintiff No. 2 from inheriting the suit property. While executing the lease deed of 1/4th specific share in the family property, Net Ram defendant No. 4 clearly admits that each co-owner of the property has been in possession of the specific property. Undoubtedly, defendant No. 4 executed a lease deed in respect of the specific property which represents the 1/4th share of his deceased son inherited by his grand- son and daughter-in-law. When the lease itself is not valid, Defendants Nos. 1 to 4 will get no lease-hold rights in the suit property.

5. In this view of the matter, I am of the opinion that the learned District Judge rightly granted injunction and I do not find any grounds warranting interference with the same.

6. This petition, therefore, falls and is accordingly dismissed.