
(2011) 09 SHI CK 0077
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 209 of 2011

Keshav Attri and Others

APPELLANT

Vs

Surendera

RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1

Citation : (2011) 09 SHI CK 0077

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Judgement

V.K. Ahuja, J.—The present petition has been filed by the Petitioners/defendants challenging the order passed by the learned District Judge, Kangra at Dharamshala, dated 11.3.2011, whereby the appeal under Order 43 CPC against the order dated 09.06.2009, passed by the learned Civil Judge (Sr. Division), Kangra at Dharamshala has been allowed.

2. A notice of the petition was issued to the Respondent.

3. I have heard the learned Counsel for the parties and also gone through the documents placed on record.

4. The Respondent, as Plaintiff, has filed a civil suit that she is the legally wedded wife of one Joginder Singh and order and decree dated 19.8.2004, passed by the Permanent Lok Adalat, Dharamshala has been challenged to be illegal, null and void and not binding upon the Plaintiff. The relief of permanent injunction was claimed restraining the present Petitioners from claiming the assets, liabilities, pension and other benefits of Joginder Singh now deceased. The question as to whether the decree in question passed by the Permanent Lok Adalat, Dharamshala is null and void and binding upon the Plaintiff is liable to be set aside and is under challenge in the civil suit filed by the Respondent/Plaintiff. The learned trial Court had declined to grant the relief of injunction in favour of the Respondent/Plaintiff and dismissed the application under Order 39 Rules 1 and 2

Code of Civil Procedure. By the impugned order, the learned District Judge, Kangra at Dharamshala had allowed the appeal and directed the parties to maintain status quo qua the assets, liabilities, pension and other benefits of the deceased Joginder Singh.

5. Once the question as to the validity of the judgment passed in the Divorce Petition in between Joginder Singh and Surendera is in dispute before the learned trial Court, I do not find any infirmity in the order passed by the learned District Judge because in case the Plaintiff is able to prove that the order passed by the Permanent Lok Adalat Dharamshala is not binding upon her and once the Defendants are allowed to take away the property, it will be difficult for the Plaintiff to execute the decree. Once the question of status of the parties and their rights are in dispute before the learned trial Court, it is desirable that injunction is granted to the Plaintiff till the case is decided by the learned trial Court. The question of limitation has been taken by the learned Counsel for the Petitioner in the present petition but no finding has been given by the learned trial Court so far in regard to the limitation and no opinion can be expressed at this stage. The order passed by the learned District Judge in a petition under Order 39 Rules 1 and 2 CPC cannot be quashed since there is no infirmity and the discretion has been exercised by the learned District Judge in a proper manner. There is no merit in the petition filed by the Petitioner and the impugned order is upheld. The parties shall appear before the learned trial Court on the date already fixed. The learned trial Court shall try and dispose of the case within a period of six months from today.

6. In view of the above, the petition is disposed of accordingly, so also the pending miscellaneous application(s), if any. A copy of this order be sent to both the Courts below for compliance.