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**(1993) 04 P&H CK 0080**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revision No. 957 of 1992**

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|-----------------------------|----|------------|
| Smt. Chander Kanta          | Vs | APPELLANT  |
| Smt. Sunita Jain and Others |    | RESPONDENT |

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**Date of Decision :** 27-04-1993

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115  
Specific Relief Act, 1963 — Section 36(1), 36(2), 37

**Citation :** (1993) CivCC 577 : (1993) 104 PLR 327

**Hon'ble Judges :** V.K. Jhanji, J

**Bench :** Single Bench

**Advocate :** Inderjit Malhotra, for the Appellant; M.L. Sarin and Alka Sarin and P.C. Mehta and S.S. Chandi, for the Respondent

**Final Decision :** Allowed

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## Judgement

V.K. Jhanji, J.—Pawan Kumar during his life time not only gifted his property, but also entered into family settlement, made partition as well as suffered decrees. After his death, dispute arose between his heirs, In the present litigation, his daughter tiled a suit for declaration as well as for possession claiming share in the property. Along with the suit, she made an application for grant of ad-interim injunction. The application was contested by the defendants The trial Court finding prima facie case in favour of the petitioner, granted ad-interim injunction. This order was challenged by the defendants in appeal, which was allowed on the ground that no ad-interim injunction can be granted in a suit for declaration, and consequently, the injunction granted by the trial Court was vacated. This order is being impugned in the present revision petition.

2. Learned counsel for the petitioner has contended that the present suit is not a suit for declaration simplicities, but primarily a suit for possession and the prayer for declaration is only Incidental.

3. On the other hand, Mr. M. L. Sarin, Senior Advocate appearing for respondent No. 1 has vehemently argued that the petitioner was not entitled to injunction.

He has placed reliance upon a judgment of this Court rendered in *Surja v. Gopi* 1970 Cr iL. J. 188. Mr. Sarin has also contended that even on merits, the petitioner is not entitled to the grant of ad interim injunction.

4. After hearing learned counsel for the parties at length, I am of the view that the present revision petition deserves to succeed. The trial Court finding a prima fice case in favour of the petitioner, granted ad-interim injunction. This order was challenged in appeal. The first appellate Court without going into the merits of the case, decided the appeal on the ground that in a suit for declaration, injunction cannot be granted. On perusal of the plaint, I find that the suit is not only for declaration, but is also for possession by way of partition. In the suit, the petitioner is claiming share in the property of her father who was in possession of Joint Hindu Family property. I also do not find any merit in the contention of learned counsel for the respondent that no injunction can be granted in a suit for declaration Injunctions arc dealt with in Chapter-VII, Part-III of the Specific Relief Act (briefly "the Act") and Order 38 of the Code of Civil Procedure. Section 36 of the Act provides that preventive relief is granted at the discretion of the court by injunction, temporary or perpetual. Subsection (I) of Section 37 of the Act deals with temporary injunction. It provides for the grant of temporary injunction during the pendency of the suit. According to the subsection, injunctions are regulated by the Code of Civil Procedure. Sub-Section (2) of Section 37 of the Act provides for the grant of perpetual injunction which can be granted only by the decree made at the hearing and upon the merits of the suit. Clause (a) of Rule 1 of Order 39 of the CPC provides that where in any suit, any property in dispute is in danger of being wasted, damaged or alienated by any party to the suit, or wrsngfully sold in execution of a decree, the Court may by order grant a temporary injunction to restrain such act, or to make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property (or dispossession of the plaintiff, or otherwise causing injury to the plaintiff, in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders).

5. A combined reading of Section 36, sub sections (!) and (2) of Section 37 of the Act and clause (a) of Rule 1 or Order 39 of the CPC makes it clear that irrespective of the nature of the suit, the Court can grant temporary injunction if it is satisfied on the basis ?f material on record and on following the principles as laid down under Rules 1 and 2 of Order 39 of the Code of Civil Procedure. The question as to whether one is entitled to the grant of injunction, is to be decided on the facts of each case and there is no law brought to my notice under which temporary injunction cannot be granted in a suit for declaration. Reliance placed by Mr. M.L. Sarin, Senior Advocate, upon a judgment of this Court rendered in *Surja's case (supra)* was noticed by the Court in *Smt. Giano v. Bhim Singh* (1977) 79 P. L. R. 601 wherein it was held that it is not possible to lay down as a matter of law either that an injunction can always be granted in a suit for declaration or that no injunction can ever be granted in such a suit. On the facts

of each case, it will have to be decided whether the application for injunction does not fall within the four corners of either Rule 1 or Rule 2 of Order 39 of the Code of Civil Procedure. The question of exercise of inherent jurisdiction of the Court is a separate matter". Thus, I am of the view that the contention of Mr. Sarin that temporary injunction cannot be granted, is devoid of any merit. Since the first appellate Court while deciding the appeal did not go into the merits of the appeal, a direction has to be issued to the first appellate Court to decide the appeal afresh in accordance with law.

6. Consequently, the revision petition is allowed and the impugned order is set aside, and the case is remitted back to the Court of Additional District Judge, Hissar, for decision afresh after hearing the parties on merits.

7. Parties through their counsel are directed to appear before the Additional District Judge, Hissar, on 10.5.1993.