

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 335 of 2012.

Date of decision: 30.11.2012.

Mukhtiar Singh Katoch son of Shri Bidhi Chand Katoch, resident of village and PO Bir Bagehra, Tehsil Sujanpur, District Hamirpur, H.P.

.....Petitioner.

Vs.

Smt. Parbhathi Devi wife of Shri Bidhi Chand Katoch, resident of village and PO Bir Bagehra, Tehsil Sujanpur, District Hamirpur, H.P.

.... Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting? No

For the petitioner : Mr. Tarun K. Sharma, Advocate.

For the Respondent :

Kuldip Singh, Judge (Oral).

This petition is directed against judgement dated 18.7.2012 passed by learned District Judge, Hamirpur in Civil Misc. Appeal No. 48 of 2011.

2. The petitioner has filed a suit against the respondent. He has pleaded that suit land is recorded in the ownership and possession of the respondent. The entries in favour of respondent are wrong as respondent has given the suit land to petitioner in family partition out of love and affection in February 2010. The petitioner has also filed an application under order 39, rules 1 & 2 CPC for interim injunction restraining the respondent from alienating the suit land during the pendency of the suit.

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

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3. The suit has been contested by the respondent by filing written statement. She has taken several objections. She has pleaded that suit land is her self acquired property. She has asserted her possession over the suit land.

4. The application for interim injunction was dismissed by the trial court on 12.10.2011. The petitioner filed an appeal against the order dated 12.10.2011, which has also been dismissed by the learned District Judge on 18.7.2012. The petitioner has filed the petition under Article 227 of the Constitution of India.

5. The learned counsel for the petitioner has submitted that both the courts below have erred in dismissing the application of the petitioner refusing to grant him the interim relief. It has been submitted that respondent is threatening to alienate the suit property and therefore, the courts below have erred in not restraining the respondent from alienating the suit property. The courts below as per latest revenue record have found the possession of respondent on the suit land. In these circumstances, prima facie case, balance of convenience and irreparable loss are in favour of the respondent. Moreover, alienation, if any, during the pendency of suit will be governed by the principle of *lis pendens*. There is no jurisdictional error in the impugned judgement.

6. Resultantly, the petition fails and is accordingly dismissed, so also the pending application, if any.

November 30, 2012.
(Hem)

(Kuldip Singh)
Judge.