

**IN THE COURT OF SARU MEHTA KAUSHIK,
PRINCIPAL JUDGE, FAMILY COURT,
PATIALA (UID No. PB0442)
CAMP COURT AT SAMANA**

INDIG No. 01/2019

CNR No. PBPTF4-000051-2019

Date of Decision: 04.03.2020

Amarjeet Kaur, aged about 53 years wife of Dhanna Singh son of Sant Singh, resident of village Shahpur, Tehsil Samana, District Patiala, now resident of village Padarath Khera, Tehsil Narwana, District Jind.

..... Petitioner

Versus

Dhanna Singh son of Harchand Singh, resident of village Shahpur, Tehsil Samana, District Patiala.

...Respondent

(In the matter of Civil Suit)

Application U/o 39 rule 1-2 CPC

Present: Petitioner with Sh. SK Goyal, Adv.

Respondent with Sh. KS Randhawa, Adv.

ORDER

1. This order shall dispose off an application filed by the petitioner under order 39 rule 1-2 CPC restraining the respondent from alienating or in any manner disposing off any part of the suit property, fully detailed in the head note of the plaint, during the pendency of the suit.

2. It has been averred in the application that the petitioner is the legally wedded wife of the respondent and their marriage had taken place about 31 years ago as per Hindu rites and ceremonies at village Padarath Khera, Tehsil Narwana, District Jind. After marriage, they cohabited with each other and out of their wedlock, a female child namely Ramandeep Kaur was born, who is now married. Since the very beginning of

marriage, behaviour of the respondent towards the petitioner was not good. The respondent is a drug addicted person and many a time, he used to beat the petitioner under the influence of liquor and other intoxicants. He also threatened to perform second marriage and alienate his land in the name of his second wife or near relatives. Many a time, *panchayats* were convened to make the respondent understand but in vain. It was submitted that in the second week of January 2016, a maintenance settlement was executed between the parties, wherein the respondent agreed to pay maintenance to the tune of Rs.15,000/- per month to the petitioner w.e.f. 01.02.2006. The respondent failed to pay even a single penny to the petitioner and finally, refused to pay any amount to her. Now the petitioner came to know that the respondent is trying to dispose off the suit property, just to deprive of the right of the petitioner. If the respondent succeeds in doing so, it would be very difficult for the petitioner to recover and realize the amount from the respondent. *Prima facie* case and balance of convenience is made out in favour of the petitioner. Prayer for allowing the application was made.

3. On notice being served, respondent filed reply to the application submitting therein that the petitioner got transferred the land measuring 24 kanal in her name from the respondent by committing fraud with him, by way of sale deed dated 05.07.2006. Prior to the filing of present suit, she had also executed transfer deed dated 01.03.2018, in favour of her daughter, illegally and unlawfully. When the respondent came to know about this fact, he filed a civil suit against the petitioner challenging the alleged sale deed and transfer deed, which is pending

adjudication. No compromise was ever effected between the parties nor the respondent ever agreed to pay Rs.15,000/- per month to the petitioner w.e.f. 01.02.2016 towards arrear of maintenance. The respondent never threatened to alienate the suit property. Denying other averments, prayer for dismissal of application was made.

4. Heard Mr. SK Goyal, learned counsel for petitioner, Mr. KS Randhawa, learned counsel for respondent and have gone through the record.

5. Perusal of record indicates that relationship between parties is admitted. The fact that the parties are residing separately is also not in dispute. The reason of separation is different as per the parties and is a matter of evidence. Petitioner being legally wedded wife is entitled to maintenance from respondent. Jamabandi for the year 2015-16 indicates that respondent is owner of agricultural land as mentioned therein. There is no document on file to show that respondent had agreed to sell or had earlier sold any part of his share in the land. Entry regarding mutation no.2069 is incorporated in the said *jamabandi* which indicates that petitioner had transferred certain land in favour of her daughter on 05.03.2018. It had been argued on behalf of petitioner that the possession of the said land is with respondent and it was a sham transaction. Whether petitioner is able to maintain herself or not and what is the impact of the said transaction would be considered after taking evidence. To protect the rights of petitioner, at this stage, it would be appropriate if respondent is restrained from alienating some part out of his share in the land as detailed in *jamabandi*. For the relief of temporary injunction, petitioner

has to show that *prima facie* case lies in her favour, balance of convenience tilts on her side and that she would suffer an irreparable loss if the injunction is not granted. All the three factors as aforementioned seem to exist in favour of petitioner who being wife of respondent has a right of maintenance and the right will be affected if respondent sells his entire land.

6. On the basis of documents a *prima facie* case is made out in favour of petitioner. Balance of convenience is also in favour of petitioner and irreparable loss and injury shall be caused to petitioner if temporary injunction is not granted at this stage. Therefore in view of the discussion made above, application in hand stands allowed to the extent that respondent is restrained from alienating 1/3 share of his property, as mentioned in head note of plaint, during pendency of the present suit regarding which he has already given a statement that he has no objection to the same. However, anything said or observed herein above shall have no bearing upon merits or final outcome of the main suit.

PRONOUNCED
04.03.2020

(SARU MEHTA KAUSHIK)
PRINCIPAL JUDGE, FAMILY COURT
PATIALA
(CAMP COURT, SAMANA)
(UID No. PB 0442)

Anil Garg
Stenographer Grade-I

Note: This order contains Page No.1 to 4 duly checked and signed.

INDIG No. 01/2019

CNR No. PBPTF4-000051-2019

Date of Decision: 04.03.2020

Amarjeet Kaur vs. Dhanna Singh

Present: Petitioner with Sh. SK Goyal, Adv.

Respondent with Sh. KS Randhawa, Adv.

Arguments on application under order 39 rule 1-2 CPC heard.

Vide separate detailed order of even date, application stands allowed, as stated therein. No RW is present. On request, case is adjourned to 25.03.2020 for evidence of respondent on application under order 33 rule 1-2 CPC. Report of Collector regarding petitioner's property be also called.

PRONOUNCED

04.03.2020

**(SARU MEHTA KAUSHIK)
PRINCIPAL JUDGE, FAMILY COURT
PATIALA
(CAMP COURT, SAMANA)
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Anil Garg

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