

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

CR 1861 of 2015

Date of decision:- 17.3.2015

Rama Devi

Petitioner

vs.

Smt. Champa Devi & anr

Respondent

Present: Mr. Sachin Mittal, Advocate.

M.M.S.BEDI,J.

An application filed by the plaintiff- petitioner for police help directing the defendant- respondents to hand over the vacant possession of the shop after removing the goods and lock of the defendants from the shop in dispute has been dismissed vide order dated 20.11.2014.

Aggrieved by the said dismissal order, the plaintiff- petitioner has approached this court. A perusal of the impugned order dated 20.11.2014 indicates that the plaintiff- petitioner had obtained a restrain order against the defendant- respondents from alienating the suit property as well as restraining them from interfering in the possession of the plaintiff- petitioner over the suit property. The claim of the plaintiff- petitioner is that the defendant- respondents had forcibly broken the lock of the shop in the month of June, 2014 and put some goods in the shop, besides putting their own lock over the same. Vide order dated 20.11.2014 the application filed by the plaintiff- petitioner has been dismissed observing that the plaintiff- petitioner has got remedy under Order 39 Rule 2-A CPC.

I have considered the contention of the counsel for the

petitioner and carefully gone through the order passed by the civil court and the documents made available by counsel for the petitioner. The violation of interim injunction of restrain is alleged to have been made. The interim order, which is allegedly to have been violated has not become final till date. The defendant- respondent No.1 stands proceeded against ex-parte.

After hearing learned counsel for the petitioner I am of the considered opinion that the plaintiff- petitioner, in the garb of interim injunction order seeks to recover the possession by moving an application u/s 151 CPC, with the help of the police. The application, in the exercise of discretionary power, has been dismissed by the civil court. As to which of the party is in actual possession of the property, is certainly a debatable issue, which is sub judiced before the civil court. Prima facie the assessment of the comparative possessory rights of the parties are to be determined by the civil court in the exercise of power under Order 39 Rules 1 and 2 CPC, which order is subject to a statutory appeal. Taking coercive steps on the belief that the plaintiff- petitioner had actually been in actual physical possession of the property in dispute or that he has been dispossessed pursuant to the interim injunction, cannot be adjudicated upon by this court. The civil court appears to have rightly dismissed the application without prejudice to the right of the petitioner to establish his legal rights by leading evidence before the civil court below or to avail any other legal remedy before any forum, as per law.

Dismissed.

March 17 , 2015
TSM

(M.M.S.BEDI)
JUDGE