212 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.4298 of 2015 (O&M)
Date of Decision: November 18, 2015

Dara Singh (deceased) through LRs and others .... Petitioners

vs.

Surjit Singh and others .... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. J.S. Brar, Advocate for the petitioners.

Mr. D.S. Brar, Advocate for respondent No.1.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

Impugned in the present revision petition is the order dated 01.07.2015 (Annexure P-7) passed by learned Addl. District Judge, Faridkot, affirming the order dated 28.05.2015 (Annexure P-6) passed by learned Addl. Civil Judge (Sr. Divn.), Faridkot, vide which the application of the plaintiffs-appellants for grant of ad-interim injunction, was dismissed.

The short facts, which are required to be noticed for the purpose of disposal of this revision are that the plaintiffs by way of filing of the present suit challenged the *sanad* partition, ordered in the partition proceedings before the Revenue Court in case titled as "Surjit Singh vs Dara Singh and others", alleging that the *sanad* was procured by way of fraud and misrepresentation upon Asstt. Collector Ist Grade, Faridkot. The fraud mentioned in the plaint is that Ajaib

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Singh had died 24-25 years back and the service of the remaining respondents were not properly effected. It is claimed that they are resident of village Sher Singh Wala, whereas the service was effected on the address of village Chet Singh Wala. During the pendency of the suit, ad-interim injunction was sought, which was declined by the lower court and was affirmed in the appeal by the first appellate court.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the petitioners has referred to the order of Assistant Collector, Ist Grade, Faridkot, which has been reproduced in the grounds of revision, wherein in the order dated 05.11.2009, it is noticed that office report received that the present plaintiffs did not reside in the said village and the counsel for the applicant stated that he had no knowledge about the correct address of the respondents and requested for proclamation. Accordingly, proclamation was ordered.

Learned counsel for the petitioners has also produced the photocopy of the proclamation published in the newspaper, which was effected on the address of village Chet Singh Wala. It is alleged that proper procedure was not followed by the Asstt. Collector 1st Grade, Faridkot and fraud had been committed upon him to get a favourable order in the partition proceedings. Therefore, in such case, the plaintiffs had rightly challenged the partition proceedings before the civil courts.

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It comes out from the order of the partition proceedings that the appeal was filed before the Collector, which was dismissed. Further, a revision before the Commissioner was also dismissed. The present plaintiffs did not approach the Financial Commissioner or this Court by way of filing of writ petition, rather chose to file a civil suit.

The lower court while dismissing the application has made the following observations:

> "*--- The defendant No.1 also placed on record copy of summons issued by the Assistant Collector grade-1 to appear for 21.10.2009 and 05.11.2009 whereby the address of plaintiffs as well as remaining defendants is clearly mentioned as that of village Sher Singh Wala. Even though the plaintiffs have place on record copy of publication vide which the publication against the plaintiffs as well as defendants was effected whereby the address has been mentioned as village Chet Singh Wala, however, plaint of the plaintiff is completely silent about the service of summons for 21.10.2009 and 05.11.2009 whereby the address was mentioned as that of Sher Singh Wala. Even otherwise the plaintiffs have pleaded that defendant No.1 has played fraud upon the revenue officials and exercised his resourcefulness by getting service of plaintiffs manipulated. All these facts require deeper probe which shall only come to light at the time of evidence. However, by allowing the present application, this Court cannot summarily set aside the partition affected before the revenue authorities without taking evidence on record. Therefore, no prima facie case or balance of convenience lies in favour of the*

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plaintiffs and further plaintiffs are not likely to suffer any irreparable loss if stay is not granted. ---"

The lower appellate court also took the view that *prima facie* there is nothing on record to show that the partition proceedings are result of fraud.

Learned counsel for the respondents on the other hand has argued that an equally efficacious remedy was available with the plaintiffs to approach the Financial Commissioner as well as this Court by way of filing of writ petition. Therefore, civil suit cannot be filed and is barred.

It is further argued that from the record, no *prima facie* fraud is proved. The execution proceedings are also pending, in which possession of the part of land has also been delivered to the respondents/defendants.

After going through the file and facts of the case, I am of the view that in this case the partition proceedings have been challenged before the civil courts on the ground that service was got effected at the wrong address. The lower court has noticed that summons were sent on the address of village 'Sher Singh Wala'. However, it will always remain a disputed fact that whether the present plaintiffs had the knowledge of the partition proceedings or not, as there were numerous defendants. The lower court has yet not determined that the fraud was committed. Thus, the execution proceedings, in pursuant to the *sanad* partition issued by the Revenue Court cannot be stayed. Both the courts have exercised

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discretionary powers in not staying the execution proceedings before the Revenue Court. Therefore, while exercising the revisional powers, this Court does not find any reason to interfere in the discretionary powers exercised by both the courts below.

Accordingly, the present revision petition stands dismissed.

(KULDIP SINGH)
JUDGE

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