

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R.No.8423 of 2015 (O&M)

Date of Decision: December 10, 2015

Jaswinder Pal Singh

...Petitioner

Versus

Parminder Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers 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?

Present: Mr.Akshay Bhan, Senior Advocate with
Mr.Vaibhav Sehgal, Advocate,
for the petitioner.

AMIT RAWAL, J. (Oral)

The petitioner-plaintiff is aggrieved of the impugned order dated 7.11.2015 (Annexure P-1) passed in Civil Misc.Appeal No.357, vide which the Lower Appellate Court has vacated the interim order dated 31.10.2015 on the premise that the petitioner-plaintiff did not disclose to the Court with regard to the filing of the caveat petition.

Mr.Akshay Bhan, learned Senior counsel assisted by Mr.Vaibhav Sehgal Advocate, appearing on behalf of the petitioner-plaintiff submits that the caveat petition was filed in the Court on 3.11.2015, thus, on the date of filing and registration of the appeal, much less passing of the *ex-parte* interim order, there was no caveat.

I have heard the learned counsel for the petitioner and appraised the paper book.

It would be apt to reproduce the order dated 31.10.2015, which

reads thus:-

Harbhajan Singh Vs. Parminder Singh & others

CMA/357/2015

Present: Sh.Parveen Garg Adv.for the appellants.

Received by entrustment. It be registered. Notice to respondents be issued through courier as well as in an ordinary manner for 10.11.2015 on filing courier/copy.

Heard. Respondent no.1 is restrained from raising any construction over any part of the property in dispute as detailed in the prayer and further restraining the respondent no.43 from granting any permission to respondent no.1 for installing any Petrol Pump in part of the suit property till 10.11.2015”.

However, the Lower Appellate Court has accepted the application filed on behalf of the respondents for recalling of the order and has vacated the interim order, whereas the appeal is still pending.

It is a matter of record that injunction has been sought in a suit for partition. Now apprehension of the petitioner-plaintiff is that during the pendency of the suit, the respondents may not set up the Petrol Pump until and unless the suit is decided on merits.

I am of the opinion that the Lower Appellate Court has noticed that the caveat was registered on 3.11.2015, thus, there cannot be any intentional and willful act of concealment on the part of the petitioner-plaintiff and should not have been a ground for recalling of the order by keeping the appeal pending, so that during the interregnum, the respondents may not raise the construction or change the nature of the property by setting up the Petrol Pump.

Keeping in view the aforementioned facts, the impugned order dated 7.11.2015 is hereby set-aside and the interim order dated 31.10.2015

is restored back. However, Lower Appellate Court is directed to decide the Civil Misc.Appeal, aforementioned, after hearing the other side on merits instead of pondering whether there was a concealment or not. I am of the view that there was no such concealment as caveat was registered on 3.11.2015.

With the above observations, the revision petition stands allowed.

December 10, 2015
ramesh

(AMIT RAWAL)
JUDGE