

Civil Revision No.197 of 2014

-1-

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.197 of 2014

Date of Decision:31.3.2016

Surjit Singh

---Petitioner

vs.

Avtar Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Deepak Nayar, Advocate
for the petitioner

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present petition has been directed against orders dated
11.10.2010 (Annexure P-1) passed by the Civil Judge (Junior Division),

Amritsar and dated 17.8.2013 (Annexure P-2) passed by the Additional District Judge (Ad hoc), Fast Track Court, Amritsar whereby the application filed by Avtar Singh respondent/plaintiff for grant of ad interim injunction has been allowed and the application filed by the petitioner/defendant for the same relief has been dismissed.

The petitioner and contesting respondent Avtar Singh are real brothers and defendant No. 2/proforma respondent Ms. Paramjit Kaur is the daughter-in-law of petitioner Surjit Singh. The dispute between the parties is in respect of property bearing No. 3332, admittedly taken on lease from Akhara Nirwansar, I/S Sultanwind Amritsar.

The respondent/plaintiff filed a suit for injunction restraining the defendants from interfering in raising construction of roof of property bearing No. 3332 on the premise that some part of the roof of the property shown in yellow colour in the plan had fallen and some part was demolished for raising construction of the roof.

The petitioner/defendant claimed that the respondent/plaintiff is in possession of property No. 3332 being a licensee of the petitioner though the lease deed qua the said property has been executed in his favour

by the aforesaid Akhara. It is further pleaded that respondent obtained his signatures on the site plan by way of misrepresentation on the pretext that the same were required for obtaining a loan but later, the respondent filled up the colour as red instead of blue with a mala fide intention. The portion in dispute is required to be filled up with blue colour so that the property can be partitioned in a proper manner i.e. half share of the plaintiff and half share of defendant No. 1.

The learned trial court, in view of its observations recorded in para 9 of the impugned order has accepted plea of the respondent/plaintiff and accordingly, application for stay filed by him was allowed and the petitioner alongwith his co-defendant were restrained from interfering in construction of roof of the demised premises in possession of the plaintiff and shown as yellow in the site plan. As a natural corollary, application filed by the petitioner for grant of stay was dismissed. As has been noticed hereinbefore, the matter was carried in appeal by the defendants including the petitioner but the same was dismissed and order of the trial court has been affirmed.

Counsel for the petitioner would contend that the courts below

have relied upon the site plan placed on record by the respondent/plaintiff without appreciating that signatures of the petitioner on the site plan were obtained by the respondent by taking advantage of relationship of the parties and on a false pretext that the same were required for obtaining a loan. It is further submitted that colours in the site plan were wrongly filled in with an intent to reflect property bearing No. 3332 having fallen to the share of the respondent in an oral partition qua the entire area taken on lease by the petitioner and respondent, therefore, the orders passed by the courts below are liable to be set aside.

I have heard counsel for the petitioner, perused the paper book particularly the orders impugned.

Before advertng to the submissions made by counsel for the petitioner, it is pertinent to recapitulate that scope of interference in an order passed by the trial court disposing of an application for grant of ad interim injunction is limited. An intervention is warranted only if the order is found to be perverse or the court has disregarded certain materials on record which have substantial bearing on merits of the application. In the case at hand, it is an undisputed position that the petitioner and respondent had taken on

lease property bearing No. 3331 to 3337 comprised in khasra No. 454 Min in Gali No. 1, Putligarh, Amritsar from Akhara Nirwansar, Amritsar vide lease deed dated 8.5.1992. The total area of the property leased out by erstwhile Mahant Chatarmuni is 17 marlas. The petitioner has not denied plea of the respondent/plaintiff that the said area was orally and mutually divided between the brothers. As per plea of the respondent/plaintiff, at the time of division, a site plan was prepared and shops shown as red vested with Avtar Singh (plaintiff) and the portion shown blue vested with Surjit Singh.

The learned trial court, by taking into consideration documents on record and pleadings of the parties upheld plea of the respondent/plaintiff and a relevant extract from the order reads as follows:-

“Admittedly, plaintiff and defendant No. 1 are brothers and they took property bearing No. 3331 to 3337 in khasra No. 454 min in Gali No. 1, Putligarh, Amritsar from Akhara Nirwansar, I/s Sultanwind, Amritsar vide lease deed dated 8.5.1992. further it is also admitted that the oral and mutual partition took place between the

parties. It is the case of the plaintiff that property bearing No. 3332 came into his share whereas defendants have taken the stand that the said property came into share of defendant No. 1 and he gave on licence to the plaintiff. Now, the dispute is with regard to property No. 3332. Both the parties have challenged the oral partition between them. The plaintiff has placed on record original site plan reflecting share of Surjit Singh in blue colour and share of Avtar Singh in red colour which has been signed by Avtar Singh as well as Surjit Singh. Surjit Singh defendant No. 1 has not denied his signatures over the said site plan but has taken the stand that by misrepresentation his signatures were taken by the plaintiff. Not even a single word has been uttered by the defendants that after their signatures were taken with misrepresentation, they ever made any complaint to any higher authorities against plaintiff Avtar Singh. The fact whether the signatures of Surjit Singh were taken by

misrepresentation by the plaintiff on the site plan cannot be adjudicated at this stage. Even photocopy of the testimony of Surjit Singh in case titled “ Surjit Singh vs. Natha Singh” reflecting that in partition which took place between them in the year 1997 which was oral. One shop came to his share and three shops came to the share of plaintiff has been placed on file. Further more, defendant No. 1 has also admitted the possession of the plaintiff but in the capacity of his licensee.”

Counsel for the petitioner is not in a position to point out that the facts noticed by the trial court for disposal of the stay application are either incorrect or not borne out from the records. At the stage of deciding application for interim injunction, the court has to be convinced about a prima facie case in favour of the applicant. The trial court has further held that in case the respondent is permitted to construct the roof, the same would be subject to decision of the suit and at the peril of the plaintiff. In view of the above, I do not find any reason to interfere in the order passed by the trial court based upon correct appreciation of materials on record at

this stage when otherwise, the said order has been rightly affirmed in appeal.

For the foregoing reasons, the petition sans merit and is accordingly dismissed. Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

31.3.2016
paramjit