

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

C.R. No.3757 of 2015 (O&M)

Date of Decision.30.11.2016

2. C.R. No.3758 of 2015

Sahil Kumar and another

.....Petitioners

Vs

Hari Om and others

.....Respondents

3. C.R. No.7506 of 2015

Ram Rachhpal and another

.....Petitioners

Vs

Hari Om and others

.....Respondents

Present: Mr. Sherry K. Singla, Advocate
for the petitioners in C.R. No.3757 and 3758 of 2015 and
for the respondents No.3 and 4 in C.R. No.7506 of 2015.

Mr. S.S. Panag, Advocate
for the petitioners in C.R. No.7506 of 2015 and
for respondent Nos.3 and 4 in C.R. Nos.3757 and 3758 of
2015.

Mr. Vishal Sharma, Advocate
for respondent Nos.1 and 2.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of three revision petitions bearing Nos.3757, 3758 and 7506 of 2015. Civil Revision Nos.3757 and 3758 of 2015 have been filed at the instance of Sahil Kumar and another, who had been impleaded in pursuance of the order passed by this Court in C.R. No.2668 of 2014. The civil revision bearing No.7506 of 2015 is at the instance of defendant Nos.1 and 2 against the orders passed by the Courts below whereby ad interim application moved under Order 39 Rules 1 and 2

agreement to sell dated 23.06.2010 executed between respondent Nos.1 and 2-plaintiffs with defendant Nos.1 and 2, has been allowed.

Mr. Sherry K. Singla, learned counsel appearing for the petitioners in the aforementioned two revision petitions i.e. defendant Nos.3 and 4 submits that respondent Nos.1 and 2-plaintiffs instituted the suit for permanent injunction against defendant Nos.1 and 2 claiming following relief:-

“Suit for permanent injunction restraining the defendants and their agents employees from alienating or creating third party right in any manner in the land measuring 5 acres out of land comprised of khasra No.169, 170, 171, 172, 173, 174, 179, 180, 182, 181, 183, 184, 185, 186, 187, 188, 189, 167, 168, 175/2, 176/1, 177/2, 166, 175/1, 176/2, 171/1, 178 khewat No.712, 713, 714 khatauni No.778, 779, 780, 781, 782 as per jamabandi for the year 2004-05, village Mundian Kalan, Tehsil and District Ludhiana in any manner except to the plaintiffs in terms of agreement dt. 23.06.2010 and further restraining the defendants from changing the existing condition of the said land and from raising any construction in any manner on any part of the said land and from transferring the possession of the said land to any other person except to plaintiffs”

In essence, the foundation/outcome of the suit was an alleged agreement to sell dated 23.06.2010 in respect of land measuring 5 acres out of 36 acres of land, however, from the perusal of the extraction of the description of the property, entire khasra numbers of 36 acres have been given and the Courts below after hearing parties to the lis, granted the status quo. Under the garb of status quo order, the petitioners are suffering a lot as not being able to utilize the land in the manner and mode as indicated. The

and this Court vide order dated 11.02.2016 clarified that the status quo will not operate against the property other than the property in khara No.185/2, 188, 189 in extent respectively 2-4-8, 3-12-13 and 4-9-3 aggregating 10 bigha, 6 biswas and 4 biswansi. The aforementioned area is more than 5 acres and therefore, interest of the plaintiffs in the property is kept in tact. It is in this backdrop of the matter, application was also moved seeking clarification of the order passed by the Courts below but the same has erroneously been dismissed vide order dated 29.05.2014 (Annexure P-8) in Civil Revision No.3757 of 2015.

Mr. Panag, learned counsel appearing on behalf of the defendant Nos.1 and 2 submits that the status quo order is not maintainable as the suit for permanent injunction, ex facie, is not maintainable as per the provisions of Section 41(h) of the Specific Relief Act, 1963 and the remedy, if any, lies elsewhere and this fact has not been taken care of by the Courts below and therefore, the order of status quo is liable to be set aside as more than a period of six years has elapsed and there will be no end to the aforementioned status quo order.

Mr. Vishal Sharma, learned counsel appearing for the plaintiffs-respondent Nos.1 and 2 submits that the agreement to sell does not contain time being essence, for, contingency was that as and when there is dispute with regard to the suit land within a period of 12 months, a cause of action would arise to the plaintiffs to seek the actual relief i.e. the suit for specific performance in case the defendants do not come forward to perform their part of the agreement and therefore, the suit is maintainable.

He further submits that if such objection is taken in written statement, that will be taken care at the relevant point of time and not at this

stage, thus, urges this Court for confirming the orders under challenge as the status quo order is only with regard to the suit property i.e. 5 acres out of 36 acres.

I have heard learned counsel for the parties, appraised the paper book and of the view that for adjudication of the ad interim application under Order 39 Rules 1 and 2 CPC, the Courts below have to examine whether the parties seeking injunction have complied with the following aspects:-

- (a) prima facie case
- (b) balance of convenience
- (c) irreparable loss.

The agreement to sell, though has been denied by defendant Nos.1 and 2, the suit has been filed determining the right arising therefrom in respect of land measuring 5 acres. The application moved at the instance of defendant Nos.3 and 4 for clarification and as well as in the appeal filed against order passed under Order 39 Rules 1 and 2 CPC after having allowed to be impleaded by this Court on the ground that there had been a partition amongst co-owners and the khasra numbers noticed/indicated in the order dated 11.02.2016 have fallen to the share of defendant Nos.1 and 2 since the privity of contract had been between defendant Nos.1 and 2 and the plaintiffs. There should not be status quo regarding other share. In my view, order dated 11.02.2016 status quo order to the khasra numbers described here-in-above is perfectly legal and justified as relief mentioned in the suit extracted above pertains to the entire chunk of land measuring 36 acres. The order dated 11.02.2016 passed by this Court is reproduced as under:-

*“Present: Mr. Sherry K. Singla, Advocate for the petitioners.
Mr. S.S. Panag, Advocate for the respondents.*

Adjourned to 23.4.2016.

Status-quo will not operate against property other than the property in khasra No.185/2, 188, 189 in extent respectively 2-4-8, 3-12-13 and 4-9-3 aggregating 22 bigha, 6 biswa and 6 biswani.

A phtostat copy of this order be placed on each connected case.”

The lower Appellate Court should have examined the aforementioned aspects when application, specifically in this regard, was moved at the instance of defendant Nos.3 and 4/petitioners in C.R. Nos.3757 and 3758 of 2015.

During the course of hearing, I am apprised by the counsel for the petitioners that in the order dated 11.02.2016, the extent of the properties as mentioned in the aforementioned order have wrongly been mentioned as 22 bighas 6 biswa and 6 biswansi instead of 10 bigha 6 biswa and 4 biswani. It is, therefore, clarified that the extent of property mentioned in the order dated 11.02.2016 shall be construed as aggregating to 10 bigha 6 biswa and 4 biswanis.

For the foregoing reasons, status quo order shall be confined only to aforementioned fact.

The petitioners in C.R. No.7506 of 2015 shall be at liberty to take all possible objections, if not taken, in the pending suit qua maintainability of the suit but not in the manner and mode urged/agitated before this Court. Accordingly, the impugned orders of the Courts below are modified to the above extent.

I have also been apprised that suit for injunction had been filed in the year 2001 and after framing of the issues, now the suit is pending for adjudication of the misc. application moved at the instance of the plaintiff. In order to prevent further miscarriage of justice, I deem it appropriate to issue directions to the trial Court to expedite the disposal of the suit by affording 4-4 effective opportunities to the parties and ensure that none of the parties to the lis cause any inexplicable delay in adjudication of the suit and if so done, appropriate order in accordance with law be passed but the suit shall be decided preferably within a period of one year.

All the revisions petitions stand disposed of with the above observations/directions.

(AMIT RAWAL)
JUDGE

November 30, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No