

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.3795 of 2015

Decided on: 23.07.2016

Charan Dass

....Petitioner

Versus

Jagtar Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Harinder Singh, Advocate
for Mr. A.S. Jattana, Advocate
for the petitioner.

Mr. Zorawar Singh, Advocate
for respondent No.3.

- 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?*

REKHA MITTAL, J.

The present petition has been directed against the order dated 16.05.2015 (Annexure P-7) passed by the Additional District Judge, Hoshiarpur whereby the order of *status quo* passed by the trial Court while disposing of application for grant of interim injunction has been set-aside and the application filed by the petitioner for interim stay has been dismissed.

The petitioner has filed a suit for permanent injunction restraining the defendants from interfering into physical possession of the plaintiff over the suit property marked as ABCD shown in green colour as per site plan dated 29.01.2014 comprising khasra No.23//25 (2-5) on the basis of agreement to sell dated 03.10.1991.

Counsel for the petitioner would submit that Jagtar Singh –

respondent No.1, father of Rajinder Singh – respondent No.2 executed an agreement to sell dated 03.10.1991 for sale of 11 marlas of land comprised in Khasra No.23//25 (2-5) on behalf of Rajinder Singh (minor at that time) in favour of Sh. Kartara Ram, father of the plaintiff. On the basis of agreement to sell (Annexure P-4), possession of 11 marlas of land was delivered to Sh. Kartara Ram who had already paid the entire sale consideration as per the agreement. It is further argued that as per the agreement, Jagtar Singh agreed to sell $\frac{1}{2}$ share of 45 marlas of the plot described in detail in the agreement in favour of Kartara Ram to the extent of 11 marlas, $6\frac{1}{2}$ marlas to Santokh Ram and 05 marlas to Dial Ram. A sale deed *qua* 05 marlas of land has been executed in favour of daughter-in-law of Dial Ram sufficient to show that the agreement has been partly carried into effect. It is argued with vehemence that as possession of area agreed to be sold to father of the petitioner was delivered to Sh. Kartara Ram in October, 1991, the trial Court has rightly directed the parties to maintain *status quo* with regard to possession of the suit property but the First Appellate Court committed a gross error resulting in manifest injustice by setting-aside the order passed by the trial Court. It is further argued that during pendency of the suit, respondents tried to take forcible possession of suit land that led to registration of an FIR against the assailants.

Counsel for respondent No.3 has submitted that there is no materials on record to substantiate plea of the petitioner as to how possession of 11 marlas of land out of total land measuring 45 marlas was delivered to Sh. Kartara Ram on the basis of alleged agreement to sell dated 03.10.1991 which has not been got specifically enforced

despite expiry of about 25 years. It is further argued that the Court of appeal has rightly taken into consideration *Jamabandi* for the year 2008-09 wherein the land comprising Khasra No.23//25 measuring 45 marlas is recorded to be joint property of Rajinder Singh, Bhagat Ram and Sarwan Ram and there being no entry in the revenue records that Rajinder Singh was in exclusive possession of any part of the joint property.

I have heard counsel for the parties and perused the records.

The learned trial Court disposed of the application for interim injunction with the following observations:-

“I am of the considered view that the contentions of both the sides is a matter of evidence and at this juncture, it cannot be adjudicated. The picture would be clear only when both the parties will lead their evidence. The best course to be adopted, at this stage is that the parties are directed to maintain status quo with regard to possession of the suit property, till final disposal of the suit.”

The learned trial Court did not record any finding that the petitioner has satisfied the three ingredients i.e. *prima facie* case, balance of convenience and non-granting of stay resulting in irreparable loss or injury while directing the parties to maintain *status quo*.

The petitioner has pressed into service the agreement to sell dated 03.10.1991 in order to stake his claim for possession over 11 marlas of land out of khasra No.23//25. The agreement to sell does not make reference to khewat number, khatauni number of plot purported to

be agreed to be sold to the extent of $\frac{1}{2}$ share in favour of three persons including Kartara Ram. There is no reference as to the boundaries and dimensions of 11 marlas of area agreed to be sold to Sh. Kartara Ram or possession whereof was delivered to him on the basis of agreement to sell. Counsel for the petitioner has not assailed the factual findings recorded by the Court of appeal that in the *Jamabandi* for the year 2008-09, the said khasra number is recorded to be jointly owned by Rajinder Singh, Bhagat Ram and Sarwan Ram and Rajinder Singh is not shown to be in exclusive possession on the date of agreement. Concededly, neither any suit for specific performance was filed by Kartara Ram nor by the present petitioner despite a period of more than two decades has intervened between the alleged agreement and filing of the present suit in 2014. There cannot be any dispute that a party seeking interim injunction has to satisfy the essential ingredients prescribed in Order 39 Rule 2 CPC to become entitle to interim relief. Any criminal proceedings allegedly initiated by the petitioner, by no stretch of imagination can form the basis for grant of injunction more particularly in the circumstances that an FIR is stated to be registered during pendency of the suit. In the given facts and circumstances, I do not find any error much less perversity in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed. Nothing stated in this order will prejudice either of the parties at the time of final disposal of the suit on merits.

23.07.2016

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(REKHA MITTAL)
JUDGE