

Civil Revision No.4044 of 2016

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4044 of 2016

Date of Decision: August 12, 2016

Kamla Devi

...Petitioner

Versus

Chand Kaur (since deceased) through L.Rs & others

...Respondents

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

Present: Mr.Ashish Aggarwal, Senior Advocate with
Mr.Kartik Gupta, Advocate,
for the petitioner.
Mr.N.D.Achint, Advocate,
for respondent Nos.1, 2, 4 & 5.
Mr.Madan Gupta, Advocate,
for respondent No.3.

AMIT RAWAL, J. (Oral)

The present revision petition is against the impugned order dated 30.5.2016 (Annexure P-18), whereby the application for interim stay in pending appeal before the Additional District Judge, has been declined.

Mr.Ashish Aggarwal, learned Senior Counsel assisted by Mr.Kartik Gupta, for the petitioner submits that third party objections were filed against the judgment and decree dated 29.3.2012. He has drawn the attention of this Court to the impugned order dated 30.5.2016

(Annexure P-18), relevant portion of which reads thus:-

“After considering the submission of both the parties, I have perused the entire material on record in depth and after perusing the trial Court record as well as appeal file, I find that the learned counsel for the appellant has taken three stands at one time. In para no.1 (iii) of appeal, it was pleaded that husband of appellant-objector to earn his livelihood purchase a petrol pump from its erstwhile owner and after purchasing the said petrol pump he become the owner of said petrol pump but from whom her husband Om Parkash purchased the said property is not mentioned nor sale deed regarding purchase of said property produced either before trial Court or before this Court. The second plea taken in para no.1(vi) of appeal that since 1976 neither said Capt Shish Ram alleged original landlord/DH objected on the possession of her husband and her husband was in hostile possession of the land and building and thus, become owner by adverse possession. Today learned counsel for appellant taken third stand that now the appellant become 1/6th share holder of the suit land.

9. *Towards first stand of learned counsel for appellant*

that the husband of appellant purchases said petrol pump is without any supporting document and nothing on record to show that husband of appellant purchased said petrol pump from its owner.

10. The second stand taken by learned counsel for appellant that appellant become owner by adverse possession is also not tenable as one of the plea of ownership by purchasing the land has been taken then appellant cannot take u-turn from said stand. Moreover, adverse possession is only a defence and as per law no person can assert the said fact by presenting the plaint.

11. The third stand taken by learned counsel for appellant that appellant become 1/6th share holder of the land is also devoid of merit.

12. To take ad-interim injunction, plaintiff has to show prima-facie case, balance of convenience and irreparable loss. Appellant has taken three stands at one time i.e. one purchase of property by her husband, second her husband become owner by way of adverse possession and third she became share holder in the property. In fact appellant is not sure regarding her own stand and blowing hot & cold just

to get favourable order from the Court. First of all appellant has to stand on his own leg. There is no prima facie case is made out and balance of convenience or irreparable loss is also not made out as appellant herself is not sure how she became owner in possession of the property. Learned counsel for appellant also drawn my attention towards the local commissioner report but the said report also does not say regarding nature of possession of the appellant. In fact it simply mentioning that some person of firm found present and that none of them was employee of HPCL but this is not sufficient. I have perused the judgment cited by learned counsel for the appellant but same are distinguished in the facts and circumstances of case and not helping him.

13. In view of aforesaid discussion and findings, at this stage, I find no prima-facie case or balance of convenience or irreparable loss in favour of appellant, therefore, no case is made out to stay the operation of judgment and decree. The application for stay is accordingly dismissed. A copy of this order alongwith trial court's record be sent to the court concerned immediately.”

On the other hand, Mr.N.D.Achint and Mr.Madan Gupta, learned counsel for respondent Nos.1 to 5 submit that they have no objection in case the direction is issued to the Appellate Court to decide the appeal within the time frame provided the interim stay sought for and granted by this Court continues for such period.

This Court, while issuing notice of motion on 3.6.2016, granted status-quo with regard to the possession.

In view of the statement made by the learned counsel for the respondents, the present revision is disposed of with a direction to the Appellate Court to decide the appeal within a period of two months from the date of receipt of certified copy of this order and the status-quo order with regard to possession as ordered by this Court shall continue till then.

Revision petition stands disposed of with the aforementioned directions.

August 12, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No