

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

CR No.4100 of 2016(O&M)

Date of decision:3.8.2016

Darshan Sigh and another

....Petitioners

VERSUS

Darshan Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Dhirinder Chopra, Advocate for the petitioners.

REKHA MITTAL, J.

The present petition has been directed against order dated 10.03.2016 passed by the Court of appeal whereby application filed by the petitioner/appellant for grant of interim injunction by invoking Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') restraining the respondents/defendants from raising construction and changing user of land measuring 491 bighas 7 biswas, detailed in para 1 of the impugned order, situated in village Maksudra, Tehsil and District Ludhiana has been dismissed.

The Court of appeal, on a detailed consideration of rival submissions made by counsel for the parties, has noticed that construction existing at the spot has been raised by respondent No.1 by spending a huge amount without any objection from any quarters. A relevant extract from the operative part of the impugned order reads as follows:-

“5.....So the perusal of the rival contentions raised by both the parties shows that the respondent No. 1 is settled possession of the property in dispute since long and he is also owner of some of the Khasra numbers

in dispute as well as in possession of the remaining Khasra numbers without any objection raised by anybody and he has also raised construction of various buildings in the property in dispute which are being used for religious purposes by him and as per the contentions taken by the respondent No. 1, the people of all sects comes there. . Though the applicant has placed on record the site plan showing the construction raised by the respondent No. 1 over the property in dispute, yet there is nothing on record came to hold at this stage as to which construction at present is existing on the spot and passing any order to restrain the respondent No. 1 from raising any further construction will lead to confusion regarding the construction already raised by the respondent of 1 and his followers as well as any construction raised later on. Passing any such restrain order will lead to further litigation between the parties. As admittedly the respondent No. 1 has raised a huge construction over the property in dispute, in case he further raises any construction, the same will be subject matter of the lis and in case ultimately the appellants succeed in their suit, they can get a relief to take possession after removal of whole of the superstructure thereupon. Moreover, the appellants have already lost their case before the trial court. In the circumstances of the case, I am of the view that at this stage of the case, no prima facie case is made out for issuance of any ad interim injunction in favour of the appellants/plaintiffs and in case the injunction is not granted, the appellants will not suffer any irreparable loss or manifest injury and will not be put to any inconvenience. So, in my view the ingredients as required under order 39, rule 1 and 2 CPC are not complied with in the present application and even no ground is made out to take into consideration the subsequent events and facts as required by the appellants/applicants vide application to take into consideration the subsequent facts and deciding the present application. Accordingly, in my view, the appellants/plaintiffs are not entitled to get any restrain order in their favour in the present appeal is played by them.”

Counsel for the petitioners has submitted that the reasons that weighed in the mind of Court below are not well-founded and respondent No.1 is required to be restrained from raising further construction on the land in question so that no prejudice is caused to the petitioners in the event of they being successful before the Court of appeal. It is further

argued that no prejudice would be caused to respondent No.1 in case he is restrained from raising further construction till disposal of appeal fixed on 22.08.2016 for hearing arguments. In addition, it is argued that raising of further construction may create problems in recovering possession of suit land, in case, a decree is passed in favour of the petitioners.

I have heard counsel for the petitioners, perused the paper-book particularly the order impugned.

The petitioners have filed a suit for possession of land measuring 62 bighas 10 biswas but the application for injunction appears to have been filed in respect of land measuring 491 bighas 7 biswas. The petitioners' claim for possession of suit land has been dismissed by the trial Court and the judgment is under challenge before the Court of appeal. Counsel for the petitioners has not disputed that respondent No.1 has raised huge construction by spending substantial amount. Further it has been held by the Court that in case respondent No.1 raises further construction, the same will be subject matter of the *lis* and in case ultimately the appellants succeed in their suit, they can get a relief to take possession by removal of super-structure standing thereon.

As the Court of appeal has already safe-guarded interests of the petitioners that in the eventuality of their being successful in proving their claim for possession of suit land, they can get moulded relief to recover possession after removal of construction raised at the hands of respondent No.1, there is no question of the petitioners suffering any irreparable loss or injury in case the stay is not granted.

In view of the above, I do not find any error much less illegality in the impugned order.

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*.

AUGUST 3, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no