

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.4101 of 2016
Date of decision:12.07.2016

Gulshan

... Petitioner

Vs.

Usha Rani and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Manoj Makkar, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Petitioner-defendant is aggrieved of the impugned order passed by the Lower Appellate Court allowing the miscellaneous appeal filed against the order, i.e., by partly allowing the ad interim relief, i.e., application moved under Order 39 Rules 1 and 2 of the Code of Civil Procedure (hereinafter referred to as 'CPC') in a suit claiming permanent injunction restraining the petitioner-defendant from interfering into peaceful possession over the suit property and also creating any obstacle and hindrance in the reconstruction/repair of the suit property.

Mr. Manoj Makkar, learned counsel appearing on behalf of the petitioner-defendant submits that suit property was purchased by Makhan

Lal from Bhagwan Dass after paying the consideration but the sale deed could not be executed. Bhagwan Dass was ostensible owner of the suit property and the suit qua Will executed by Makhan Lal is already pending. Shyam Sunder was aware of the Will, but yet after the death of Bhagwan Dass executed a General Power of Attorney. Shyam Sunder got the Power of Attorney from the LRs of Bhagwan Dass which was executed on 6.11.1998 and thereafter, sold the property vide sale deed dated 12.4.2013. He further submits that respondent-plaintiff has not been able to prove the possession, much less, ownership and therefore, injunction could not have been granted.

I have heard learned counsel for the petitioner and appraised the paper book and of the view that if at all the petitioner is aggrieved of the alleged act, he should have set up a counter claim in the written statement by challenging the aforementioned sale deed in order to prove the oral sale deed but in the absence of the same, cannot assert/seek vindication of the grievance. The rider imposed by the trial Court, in my view, is most innocuous and would not affect the right of the petitioner, in case, suit of the respondent-plaintiffs is dismissed, the petitioner grievance would be vindicated. The rider has been imposed for not claiming compensation, in essence, construction/reconstruction permitted had been totally at the peril of the respondent-plaintiff. I am of the view that the aforementioned observations, in fact, protected the interest of the respondent-plaintiff. Let the parties prove their case in accordance with law. No ground is made out for interference in the impugned order, much less, the same cannot be said

to have been passed without jurisdiction.

Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

July 12, 2016
savita