IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(221) Civil Revision No. 4566 of 2015
Date of Decision: ***09.12.2016***

Gugan & Another

.....Petitioner(s)

Versus

Lachhi Ram

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

****

Present: Mr. Chanderhas Yadav, Advocate
for the petitioners.

Mr. Sanjeev Kodan, Advocate
for respondent No. 1.

****

RAJ MOHAN SINGH, J. (Oral)

Defendants-petitioners have assailed the order dated 06.05.2014 passed by the Additional District Judge, Jhajjar.

[2] In a suit for injunction, plaintiff-respondent sought temporary injunction under Order 39, Rules 1 & 2 C.P.C., in respect of 'Rasta Sare Aam' vested in the Gram Panchayat, to which user has been claimed for the purposes of ingress and egress by the inhabitants of the village. Restraint was sought against the defendants from encroaching/obstructing the 'Rasta' to the extent of 14 feet shown by letters ABCD.

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[3] Trial Court has declined temporary injunction on the ground that the plaintiff had failed to prove whether the construction sought to be raised by the defendant would cause any hindrance in the right of the plaintiff? User of the 'Rasta' for the purposes of ingress and egress was also not proved. Since, 'Rasta' belongs to the Gram Panchayat therefore, in the absence of Gram Panchayat as a party to the suit, it was observed that no adjudication can be made in respect of 'Rasta' which also stood in the Gram Panchayat. The ingredients for grant of temporary injunction were found missing and the application was dismissed vide order dated 02.04.2014.

[4] The lower Appellate Court, on the basis of legal proposition, accepted the contentions of the defendant and held that jurisdiction of Civil Court was barred. The plaintiff could have resorted to the proceedings in terms of Section 13-A of the Punjab Village Common Land (Regulation) Act, 1961. While observing that the Revenue Courts have no jurisdiction to pass interim order, it was ordered that the appropriate proceedings under Punjab Village Common Land (Regulation) Act, 1961 be initiated before the competent Court within 30 days and till then parties will maintain status quo at the spot. The Lower Appellate Court further extended the scope of injunction by observing that once the proceedings are initiated before the revenue Court, the interim injunction will continue till

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culmination of the proceedings. To the extent of later observation, petitioner having felt aggrieved filed the present revision petition.

[5] At the time of issuing notice of motion on 31.07.2015, following order was passed:-

> *"While considering an appeal under Order 43 Rule 1 (r) CPC, the Appellate Court has arrived at a conclusion that the Civil Court does not have jurisdiction to adjudicate upon the matter as the controversy involved determination of the rights of parties pertaining to a property which apparently vested in Gram Panchayat. The lower Appellate Court on one side has ordered that Civil Court has no jurisdiction but simultaneously while ordering that the plaint should be returned, the plaintiff-respondent was granted order of status quo for 30 days to enable him to approach the authorities under the Punjab Village Common Land (Regulation) Act.*
>
> *So far as the observations of the lower Appellate Court that once the proceedings are initiated before the revenue Court, the interim injunction will continue till the proceedings culminate are concerned, the said observations on the face of it are without jurisdiction. It is always the discretion of the Authority under Section 7 of the Punjab Village Common Land (Regulation) Act as applicable to Haryana to adjudicate upon the interim relief.*
>
> *Notice of motion for 17.11.2015.*
>
> *Operation of order dated 06.05.2014 so far as it has granted interim injunction to the respondent during the entire proceedings, is stayed without prejudice to the right of the plaintiff-respondent to claim the said relief independently before the Collector adjudicating the petition under Section 7 of the Punjab Village Common Land (Regulation) Act."*

[6] I have heard learned counsel for both the parties.

[7] Apparently, the lower Appellate Court has extended the scope of injunction even beyond 30 days of filing of proceedings under Section 13-A of the Punjab Village

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Common Land (Regulation) Act, 1961 till culmination of the proceedings before the competent Court. In my considered opinion, the observations made in later portion of the order are totally without jurisdiction. The lower Appellate Court has granted lawful claim thereby protecting the plaintiff by means of order of status quo upto 30 days within which the proceedings were required to be filed. However, they cannot have any benefit of stay till culmination of the proceedings. In order to have further relief, the plaintiff was required to invoke jurisdiction of the revenue Court. Since the order was made on 06.05.2014 by the lower Appellate Court and the operation of the said order was stayed by this Court on 31.07.2015, therefore at this juncture it would be just and appropriate to allow further period of 30 days to the plaintiff-respondent to avail his remedy in accordance with law by way of resorting to any miscellaneous application before the revenue Court. In any case interim protection granted by the lower Appellate Court in favour of plaintiff would not be continued beyond one month from the date of passing of this order.

[8] This revision petition is accordingly disposed of.

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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