

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

**CR No.5222 of 2014
Date of decision:10.03.2016**

Rajpal ... Petitioner
Vs.

Ram Badan ... Respondent

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. Ghulam Nabi Malik, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The petitioner-plaintiff is aggrieved of the dismissal of the application filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure by the trial Court, as well as by the Lower Appellate Court in a suit for permanent injunction seeking restraint order not to dispossess him from the suit property.

Mr. Ghulam Nabi Malik, learned counsel appearing on behalf of the petitioner-plaintiff submits that Chander Singh – vendor had entered into agreement to sell dated 07.07.1999. On receipt of the earnest money, the construction had also been raised, thus, he is found in long settled possession. However, Mukesh Kumar, being General Power of Attorney, claimed ownership of the land measuring 150 square yards, vide registered sale deed dated 15.4.2011 and started interfering in the peaceful possession which necessitated him

to claim injunction. He further submits that petitioner-plaintiff is entitled to protect possession as per the provisions of Section 53-A of the Transfer of Property Act. This fact has not been noticed by the Courts below. He further undertakes that he will conclude the trial as expeditiously as possible by examining the witnesses by his own and through the process of the Court.

As per the order dated 10.10.2014, respondent has been served through her daughter-in-law. However, no one has put in appearance on his behalf. Accordingly, I proceed to decide the revision petition.

I have heard learned counsel for the petitioner and appraised the paper book.

On perusal of the order passed by the trial Court, an application for appointment of the Local Commissioner was filed by the petitioner-plaintiff. However, the same was contested and the respondent admitted his possession. For the sake of brevity, para 4 of the findings rendered by the trial Court read thus:-

“4. The plaintiff has also filed an application for appointing a local commissioner for ascertaining the possession. However, the counsel for the defendant appeared and orally admitted the factum of possession of the plaintiff, albeit with qualification that the possession was illegally acquired. Therefore, there is no need to appoint a local commissioner to decide upon the present injunction application.”

In view of such situation, the Courts below ought to have

injunctioned the respondent-defendant not to interfere in his peaceful possession and not to take the possession as per the provisions of Section 53-A of the Transfer of Property Act. Independent suit has been filed claiming possession vis-a-vis sale deed dated 15.4.2011 alleged to have been executed by the vendor in respect of the land measuring 150 square yards in favour of daughter in law.

In view of the aforementioned facts and circumstances of the case, I am of the view that prima-facie case has been made out to be within the parameters of Order 39 Rule 1 and 2 of the Code of Civil Procedure. The respondent shall not interfere in the peaceful possession of the plaintiff either himself or through agents/advocates etc, during the pendency of the suit.

In view of the statement made by Mr. Nabi, two effective opportunities are granted to the petitioner to examine the witnesses by taking the aid of provisions of Order 16 Rule 1-A of the Code of Civil Procedure, as well as, through the process of the Court. Thereafter, the trial Court shall give two effective opportunities to the respondent and decide the suit as expeditiously as possible preferably within a period of one year from the date of receipt of certified copy of this order.

Accordingly, the impugned order is set aside and revision petition is allowed.

(AMIT RAWAL)
JUDGE

March 10, 2016
savita