

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.5731 of 2014

Date of Decision:26.4.2016

Ratna and others

---Petitioners

vs.

Rajbir and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.N.Lohan, Advocate
for the petitioners

Mr. KDS Hooda, Advocate
for the respondents

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

Rekha Mittal, J.

By invoking the jurisdiction of this Court under Article 227 of the Constitution of India, the present petition has been directed against order dated 6.8.2014 (Annexure P-5) passed by the District Judge, Jind allowing appeal filed by the respondents/plaintiffs against order dated 28.5.2014 passed by the learned trial court and as a consequence accepting claim of the respondents/plaintiffs for grant of ad interim injunction

restraining the petitioners/defendants from interfering in their possession of the suit land till final disposal of the case or finalization of partition proceedings.

Rajbir and others (minors) through their father and natural guardian Satbir son of Jai Narain filed a suit for permanent injunction restraining the petitioners/defendants from interfering into their peaceful possession over agricultural land measuring 54 kanals 8 marlas and 06 kanals 11 marlas situated in the revenue estate of village Morkhi Tehsil Safidon District Jind, detailed in head note of the plaint primarily on the allegations that they have half share in agricultural land measuring 108 kanals 17 marlas and 06 kanals and 11 marlas and the remaining half share is owned by the petitioners/defendants but the suit land was mutually partitioned and khasra numbers detailed in head note of the plaint are exclusively possessed by the plaintiffs. It is further averred that the petitioners/defendants have already filed an application for partition of the joint land and another suit for permanent injunction was filed wherein the court directed the parties to maintain status quo qua possession of the suit land but later has been dismissed as withdrawn.

Alongwith the suit, an application was filed under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure (in short "CPC") for grant of ad interim injunction against interference in their peaceful and exclusive possession of the suit land that came to be dismissed by the learned trial court vide order dated 28.5.2014 (Annexure P-3). The order passed by the trial court rejecting claim of the respondents/plaintiffs for grant of ad interim injunction became subject matter of appeal Civil Misc.

Appeal No. 23 of 3.6.2014 decided by the District Judge, Jind vide order dated 6.8.2014 impugned in the present proceedings.

Counsel for the petitioners has submitted that the petitioners earlier filed a suit for permanent injunction restraining Jai Narain and others from interfering into their peaceful, exclusive and cultivating possession of the land in question in June 2012. In the said suit, written statement was filed by Sh. Jai Narain, defendant No. 1, Rajbir son of Satbir son of Jai Narain defendant No. 13, Mohit minor, Sonu minor sons of Satbir defendants No. 14 and 15 respectively wherein they denied the allegations raised in the plaint by the petitioners that an oral partition had taken place between predecessors in interest of the parties with regard to their land with the averments that the suit land is still joint of the parties and the plaintiffs therein are not exclusive owners and in cultivating possession of the suit land rather suit land is jointly owned by the parties. It is vehemently argued that keeping in view the stand taken by Sh. Jai Narian grand father Satbir, the father and minor Rajbir, Mohit and Sonu in the earlier proceedings, the plea of the respondents/plaintiffs that either the suit land was mutually partitioned between the plaintiffs and defendants or the plaintiffs are in exclusive possession of the land in question is patently falsified and belied, sufficient to negate their claim that they have a prima facie case in their favour for grant of ad interim injunction. It is further argued that the first appellate court despite noticing these facts, being a matter of record, in an arbitrary and whimsical manner set aside the order passed by the trial court disregarding the settled principle in law that no interference in an order passed by the trial court while disposing of an

application for interim injunction is warranted unless the order is found to be perverse or the trial court has failed to take into consideration any materials having a strong bearing on disposal of the stay application.

Counsel for the respondents, on the contrary, has supported the impugned order with the submissions that in the suit for injunction filed by the petitioners/defendants in the year 2012, they have raised a plea of family partition and claimed their exclusive possession of land subject matter of the earlier suit, therefore, it has rightly been held by the learned Appellate court that they cannot wriggle out of their stand taken in the plaint of the earlier suit.

I have heard counsel for the parties and perused the records.

Counsel for the respondents/plaintiffs in an answer to a query raised by the Court has fairly informed that as per the revenue records, the parties are recorded to be joint owners in joint possession of total land measuring 108 kanals 17 marlas including the suit land. It is also admitted that in the earlier suit filed by the appellant and others against Jai Narain and others, written statement was filed on behalf of Jai Narain, Rajbir, Mohit and Sonu jointly wherein they raised preliminary objection that no injunction suit lies and maintainable against co-sharers i.e. answering defendants as the answering defendants are co-owners in joint possession of the suit land. On merits, in para 1 they have denied the alleged oral partition between predecessors in interest of the parties with a categorical plea that the suit land is still joint of the parties and the plaintiffs are not exclusive owners and cultivators of the suit land rather the suit land is jointly owned and possessed by the parties. Keeping in view the entries in

the revenue record coupled with the clear and categoric stand of the respondents/plaintiffs in the earlier proceedings, the Court in appeal committed a serious error rather illegality in upholding plea of the respondents/plaintiffs that they are in exclusive possession of the suit land on the basis of oral family partition. The appellate court misdirected itself by placing reliance upon the plea of the petitioners/defendants in the earlier litigation when on the contrary, it is for the applicant to prove that he has a prima facie case in his favour to become entitled to the discretionary relief of injunction. In light of the discussion made hereinbefore, pleadings in the earlier suit coupled with the entries in the revenue record, I have no hesitation to hold that the order passed by the appellate court suffers from perversity and liable to be set aside.

For the reasons aforesaid, the petition is allowed, the impugned order is set aside and the application filed by the respondents/plaintiffs for grant of ad interim injunction against interference in their exclusive possession of the suit land is ordered to be dismissed. Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

26.4.2016
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