

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

**CR No.611 of 2015**

**Decided on: 30.09.2016**

Rajender and others

....Petitioners

Versus

Ratna and others

....Respondents

**CORAM: HON'BLE MRS JUSTICE REKHA MITTAL**

**Present :** Mr. Ajay Kumar Kansal, Advocates  
for the petitioners.

Mr. Atul Gaur, Advocate  
for Mr. Sumeet Goel, Advocate  
for respondents No.1 to 8.

**REKHA MITTAL, J.**

The present petition lays challenge to orders dated 29.09.2014 (Annexure P9) passed by the Civil Judge (Jr. Division) Kaithal and dated 02.12.2014 (Annexure P10) passed by the Additional District Judge, Kaithal, whereby application filed by the respondents/plaintiffs for interim injunction was allowed by the trial Court and the order was affirmed by the Court of appeal.

Ratna and others have filed a suit for declaration and permanent injunction that the suit land is joint of the parties as partition of joint holding in partition application No.33/T decided on 16.01.2014 titled *Rajinder etc. vs Bhana etc.* is not binding upon the plaintiffs who have no notice of the partition proceedings. Along with the suit, an application for interim injunction to restrain the petitioners/defendants from ousting the plaintiffs from joint possession illegally, forcibly and on the basis of order dated 16.01.2014 passed in the partition proceedings was filed that was allowed by the trial Court and affirmed

in appeal.

Counsel for the petitioners has assailed the impugned orders primarily on two counts. The first submission made by counsel is that as the trial Court dismissed the application for interim injunction vide order dated 26.02.2014 (Annexure P8), it was not within the jurisdiction of the trial Court to reconsider the application for interim injunction and decide the same in favour of the respondents/plaintiffs. Another submission made by counsel is that as jurisdiction of the Civil Court to decide the validity or otherwise of the order of partition dated 22.01.2014 is barred under Section 158 of The Punjab Land Revenue Act, 1887 (for short 'the Act of 1887'), the Civil Court is not competent to allow any interim relief in favour of the respondents. In support of his first contention, he has referred to judgments of Hon'ble the Supreme Court ***“Satyadhyan Ghosal vs Deorjin Debi”***, 1960(3) SCR 590 and ***“Anil s/o Jagannath Rana and others vs Rajendra s/o Radhakishan Rana and others”***, 2014 Law Suits (SC) 1095. With regard to the question of jurisdiction, he has relied upon judgments of this Court ***“Harjinder Singh vs Kesar Singh and others”***, CR No.5295 of 2013 decided on 23.10.2013 ***“Haryana Urban Development Authority vs Suresh Chhokar and others”***, 2010(2) RCR (Civil) 646 and ***“Raja Ram @ Rajender vs Tehsildar-cum-Assistant Collector, Hissar”***, 2001(2) RCR (Civil) 739.

Counsel for the respondents, on the contrary, would contend that principle of *res judicata* sought to be pressed into service by the petitioners is not attracted in the circumstances of the present

case, as the earlier order dated 26.02.2014 was passed by the Court at that stage but the application for injunction was not disposed of meaning thereby that the same was kept pending to be decided after filing of the written statement by the defendants. With regard to jurisdiction of the Civil Court, it is argued that Civil Court has the jurisdiction to examine correctness of order passed in partition proceedings, if the proceedings are not conducted in accordance with the procedure prescribed and in compliance with the principles of natural justice. In addition, it is submitted that as one of the respondents/plaintiffs impleaded as a party in the partition proceedings was a minor and had not been sued through his guardian, order passed in partition proceedings affecting right of the minor is amenable to challenge before the Civil Court. For this purpose, reference has been made to judgments of this Court ***“Giani Ram and others vs Ompati and others”***, 2008(1) RCR (Civil) 619 and ***“Karan Singh and others vs Raghbir Singh and others”***, 2014(4) RCR (Civil) 539.

I have heard counsel for the parties and perused the paperbook with their able assistance.

The trial Court after hearing counsel for the parties passed order dated 26.02.2014 holding that at this stage, no injunction can be granted to the plaintiff. In order to arrive at such a conclusion, the Court held that if it was found by the plaintiff that he was not served and partition proceedings passed in his absence then Assistant Collector, 1<sup>st</sup> Grade has power to review its order. Moreover, as per Section 158 of the Act of 1887, jurisdiction of Civil Court is barred but if any party

was not served properly in the partition proceedings then jurisdiction of Civil Court is not barred and the fact that plaintiff was served in partition proceedings or not is to be determined by leading clear and cogent evidence on this fact. Further held that moreover as per Section 41(h) of the Specific Relief Act, plaintiff can approach the Appellate Court on review side because it is well settled law that if efficacious remedy is available to a party he should approach the concerned authority as per law.

Counsel for the respondent has fairly informed that after the order dated 26.02.2014 was passed by the trial Court, no application was filed by the respondents seeking modification or review of order under any changed circumstances.

The question that arises for consideration is as to whether use of the words 'at this stage' and non-mention of the fact that application was dismissed or disposed of in the order dated 26.02.2014 can be construed in favour of the respondents, as has been held by the Court of appeal that the order dated 26.02.2014 was an interim order and vide order dated 29.09.2014, the application has been disposed of, therefore, the order could be changed by the trial Court in view of the facts and circumstances and case law which later came to the notice of the trial Court.

Counsel for the respondents has not disputed that principle of *res judicata* also applies at two stages of proceedings in the same litigation to the extent that the trial Court or a higher Court if at an earlier stage decided the matter in one way will not allow the parties to

re-agitate the matter again at a subsequent stage of the same proceedings as has been held by Hon'ble the Supreme Court in ***Satyadhan Ghosal's case (supra)***. Once the trial Court after filing of written statement by defendants No.1 to 6 and having heard counsel for the parties at length by assigning certain reasons had held that no injunction can be granted to the plaintiffs, use of the words 'at this stage' in the given circumstances would not entitle the trial Court to reconsider the matter and pass a different order. The mere fact that the trial Court has called upon the other defendants to file the written statement on the adjourned date would not justify passing of a fresh order more particularly in the circumstances that it is not plea of the respondents that in the written statement filed by the remaining defendants, any admission was made in favour of the respondents/plaintiffs on the basis whereof there was change in the fact situation warranting grant of injunction in favour of the respondents/plaintiffs. The matter would have been different had the trial Court allowed interim injunction as a temporary measure pending filing of the written statement by the contesting defendants and thereafter allowed an opportunity to the parties to make submissions and dispose of an application for interim injunction. In the present scenario, order dated 26.02.2014 passed by the trial Court would constitute as *res judicata* against the respondents and therefore, the respondents could not re-agitate the same issue before the trial Court for grant of interim injunction pending decision of the suit. In this view of the matter, the orders passed by the Courts below cannot be allowed to sustain on this score alone.

As the first contention raised by counsel for the petitioners has been accepted and decision on the question of jurisdiction would touch merits of the case in regard to maintainability of the suit, this Court would refrain from expressing any opinion in this regard, lest it may cause prejudice to either of the parties at the time of final disposal of the suit. The question of jurisdiction is left open to be decided by the trial Court at an appropriate stage of the proceedings.

In view of what has been discussed hereinabove, the petition is allowed, the impugned orders are set-aside and the application filed by the respondents/plaintiffs for interim injunction is dismissed. However, nothing stated in this order shall be construed as an expression of opinion on merits of the case.

**30.09.2016**  
*yakub*

**(REKHA MITTAL)**  
**JUDGE**

|                            |        |
|----------------------------|--------|
| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |