

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.6114 of 2016 (O&M)

Date of decision:19.09.2016

Jatinder Singh and another

... Petitioners

Vs.

Sabo the Fuel Private Limited and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Munish Bansal, Advocate
for the petitioners.

AMIT RAWAL J. (Oral)

Notice of motion.

Mr. Param Preet Singh Brar, Advocate accepts notice on behalf
of the respondents.

The petitioner-plaintiffs are aggrieved of the dismissal of the
application moved under Order 39 Rules 1 and 2 of Code of Civil Procedure
(hereinafter referred to as “CPC”) in a suit for injunction instituted on
29.02.2016 seeking restraint order against the respondents to raise
construction owing to the fact that in a suit for seeking separate possession
and partition, the preliminary decree dated 25.09.2015, has been passed.

Mr. Munish Bansal, learned counsel appearing on behalf of the
petitioners submits that the main reasoning assigned by both the Courts
below for dismissal of the application had been that the plaintiffs did not
disclose the factum of dismissal of similar suit for injunction which was

dismissed vide judgment and decree dated 23.07.2014. He further submits that initial suit was filed during the pendency of the suit for partition and the observations given therein were sufficient to enable the parties to seek partition and in the present suit as noticed above, a preliminary decree was passed. Though, in the appeal against the preliminary decree at the instance of defendant No.1, there is no interim stay and application for final decree is stated to be pending. It is in this background of the matter, petitioners were constraint to file the aforementioned suit and thus, urges this Court from restraining the respondents not to raise construction by setting aside the impugned orders.

Mr. Param Preet Singh Brar, learned counsel appearing on behalf of the respondents submits that defendants are in possession of the property owing to the sale deed effected in the year 1978, in essence, they are in exclusive possession and can deal with the property in any manner they want to. The principles culled out by a Full Bench of this Court in **Bhartu vs. Ram Sarup 1981 PLJ 204** and reiterated by a Division Bench of this Court in **Bachan Singh vs. Swaran Singh 200(3) RCR Civil 70** are not applicable to the facts and circumstances of the present case and thus, rightly so, the Courts below have dismissed the application and there was an apparent concealment of fact of dismissal of previous suit and such type of person cannot be granted interim relief as has been sought for and thus, urges this Court for affirming the findings under challenge.

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

Shorn of the facts noticed above. It is conceded position on record that a preliminary decree dated 25.09.2015 (Annexure P-3) has been passed and application for withdrawing of the matter is stated to be pending. Though there is an appeal against the defendants but there is no interim stay therein. The defendants cannot change the nature and character of the suit property, in view of the principles culled out by this Court in Bhartu's case (supra) and Bachan Singh's case (supra), after passing of the preliminary decree. Though the construction raised is on the peril but still may not take the benefit at the time of withdrawing of the suit.

In my view, all the parties to the decree dated 25.09.2015 should not indulge into changing the nature and character of the property by raising any construction. The Court, in my view, had only non-suited the plaintiffs on concealment but had not seen the findings arrived at vide judgment and decree dated 23.07.2014. In my view, the petitioners are able to prove their case within the parameters of Order 39 Rules 1 and 2 CPC. It is a fit case where the Court below ought to have granted ad interim stay by restraining the respondents not to raise any type of construction till culmination of the proceedings stated to be pending before the Courts below, much less, the trial Court for drawing the final decree. Accordingly, the orders dated 23.8.2016 and 16.3.2016 are hereby set aside and an interim injunction is granted that the respondents will not raise any

construction and aforementioned order shall apply to all the parties to the
lis.

Accordingly, the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

September 19, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No