

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

**CR No.6342 of 2016**

**Date of Decision: 18.10.2016**

Balbir Singh

.....Petitioner

Versus

Paramjit Singh & another

....Respondents

**CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr. S.S.Hira, Advocate for the petitioner.

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**DARSHAN SINGH, J (ORAL)**

The present revision petition has been preferred against the judgment dated 02.08.2016 passed by the learned Additional District Judge, Hoshiarpur, whereby the appeal filed by defendant No.1/respondent No.1 has been allowed and the order dated 26.09.2013 passed by the learned Civil Judge (Jr. Divn.), Hoshiarpur on an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter called as "CPC") has been set aside.

2. The petitioner/plaintiff filed the suit for declaration to the effect that he is absolute owner and in possession of the house in dispute situated within the *abadi deh* of village Chhauni Kalan, Tehsil and district Hoshiarpur and defendants had got no right, title or interest in the said house. The judgment and decree dated 15.06.2010 passed by the Court of learned Additional Civil Judge (Sr. Divn.), Hoshiarpur, in favour of defendant No.1 in connivance with defendant No.2-Charan Dass, the father of the petitioner/plaintiff on the basis of agreement to sell dated 06.02.2006 allegedly executed by defendant No.2 in favour of defendant No.1 with respect to the house in question is illegal, null and

void and the same has got no effect on the rights of the petitioner/plaintiff and the same is liable to be set aside. In the consequential relief, the petitioner/plaintiff has sought the decree for permanent injunction restraining the defendants/respondents from interfering in his peaceful possession over the house in dispute and from taking the possession thereof forcibly and illegally or in any manner whatsoever.

3. As per the case of the petitioner/plaintiff, he is absolute owner in possession of the house in dispute. He has raised the construction thereof in the year 2005 after demolishing the katcha house. He has also got installed an electric connection in the said house. It is further pleaded that defendant No.2-Charan Dass, his father is a habitual drunkard. Defendant No.1 along with Court official came to take the possession of the suit property. Then on enquiry made by petitioner/plaintiff, he came to know about the alleged agreement to sell dated 06.02.2006 was got executed by defendant No.1 in connivance with defendant No.2 and the impugned decree has been passed on the basis thereof. It was further pleaded that defendant No.2 was not the owner of the property in dispute and has got no right to execute the alleged agreement to sell in favour of defendant No.1. Now, defendant No.1 is attempting to take the possession of the house in dispute by getting the decree executed for which he has no legal right. Hence the suit.

4. Along with the suit, the petitioner/plaintiff also moved an application under Order 39 Rule 1 and 2 read with Section 151

CPC on the similar lines for grant of ad interim injunction.

5. The suit as well as the injunction application has been contested by respondent No.1/defendant No.1 on the ground inter alia that Charan Dass-defendant No.2, the father of the petitioner/plaintiff had entered into an agreement to sell dated 06.02.2006 in his favour for sale of the house in dispute and respondent No.1 filed a suit for specific performance against defendant No.2, which was decreed by the learned Civil Judge (Sr. Divn.), Hoshiapur, vide judgment and decree dated 15.06.2010. The execution of the said decree is pending in the Court. The sale deed has also been executed in favour of defendant No.1 by the local commissioner appointed by the Court. Thus, he pleaded that petitioner/plaintiff has not come to the Court with clean hands and has suppressed the material facts. With these pleas, defendant No.1 pleaded for dismissal of the suit as well as the said application.

6. The learned trial Court, vide order dated 26.09.2013, directed the parties to maintain the status quo with respect to the property in dispute till further orders.

7. Aggrieved with the aforesaid order, respondent No.1/defendant No.1 preferred an appeal, which has been allowed by the learned Additional District Judge, Hoshiarpur, vide impugned judgment dated 02.08.2016 and the order dated 26.09.2013 passed by the learned trial Court was set aside.

8. Aggrieved with the aforesaid judgment dated 02.08.2016 passed by the learned Additional District Judge, the present revision petition has been preferred.

9. I have heard Mr. S.S.Hira, Advocate, learned counsel for the petitioner and have gone through the paper book carefully.

10. Learned counsel for the petitioner contended that the learned trial Court by correctly appreciating the facts and material available on record has ordered the parties to maintain the status quo with respect to the house in dispute. He contended that the petitioner/plaintiff is owner in possession of the house in dispute. Earlier it was a katcha house, which was demolished in the year 2003 and the pucca house was constructed by the petitioner/plaintiff from his own funds in the year 2005. Even the electric connection in the name of petitioner/plaintiff was installed therein. He has also brought on file the copy of his marriage card, electricity bill, photocopy of identity card, voter card to establish that he is in possession of the house in dispute. Thus, he contended that petitioner/plaintiff has been able to make out the prima facie case in his favour. The balance of convenience is also in his favour and he will suffer irreparable loss if the injunction is refused and he is dispossessed from the house in dispute.

11. Learned counsel for the petitioner further contended that it is evident from the impugned judgment that earlier defendant No.2 had executed the agreement to sell in favour of one Ashok Kumar and the decree for specific performance was also passed in his favour. The sale deed was also got executed in his favour through the local commissioner appointed by the Court. Thus, he contended that once defendant No.2 had already sold the house to Ashok Kumar, he was not competent to sell the house in question

again to respondent/defendant No.1-Paramjit Singh and the sale deed in favour of Paramjit Singh is null and void. He further contended that respondent/defendant No.1-Paramjit Singh has also no right to execute the decree dated 15.06.2010, which has been procured by him in connivance with defendant No.2. Ashok Kumar has even got registered the criminal case against Charan Dass, the father of the petitioner/plaintiff.

12. He further contended that the parties were ordered to maintain status quo by the learned trial Court. The appellate Court was not justified to interfere in the discretion exercised by the learned trial Court. To support his contentions he relied upon the cases Shridevi & anr. Vs. Muralidhar & anr., 2007(14) SCC 721 and Shis Ram & anr. Vs. Karta, 2010(2) PLR 609. Thus, he contended that the impugned judgment passed by the learned first appellate Court is illegal and the order passed by the learned trial Court should be restored.

13. I have duly considered the aforesaid contentions.

14. It is settled principle of law that in order to secure the relief of ad interim injunction, the petitioner/plaintiff was required to establish the prima facie case and balance of convenience in his favour and that he will suffer irreparable loss if the injunction is refused. All these ingredients were required to be established by the petitioner/plaintiff as he has come to the Court to seek injunction. He cannot become entitled for ad interim injunction automatically on the ground of alleged weakness in the case of the respondent.

15. In the order dated 26.09.2013 passed by the learned

trial Court, this fact has not been taken into consideration at all that by seeking the injunction the petitioner/plaintiff wants to obstruct the execution of the decree dated 15.06.2010 passed by the Civil Court of competent jurisdiction. It is pertinent to mention that defendant No.2-Charan Dass, who happens to be the father of the petitioner/plaintiff had executed the agreement to sell dated 06.02.2006 regarding sale of the house in dispute in favour of defendant No.1. On the basis of said agreement to sell, defendant No.1 filed a suit for specific performance, which has been decreed by the learned Additional Civil Judge (Sr. Divn.), Hoshiarpur, vide judgment and decree dated 15.06.2010. Defendant No.1 has filed the application for execution of the said decree. The learned executing Court has appointed the local commissioner for execution of the sale deed and the sale deed has been executed in favour of defendant No.1 with respect to the property in dispute and even the warrants of possession have been issued by the learned executing Court. In the written statement filed by defendant No.1 it is mentioned that previously defendant No.2, the father of the petitioner/plaintiff has filed the suit for injunction and now he has filed the suit.

16. The petitioner/plaintiff has not placed on file any documentary evidence to show that he is the owner of the house in question or he has raised the construction thereof. The learned first appellate Court has referred to the cross-examination of the petitioner/plaintiff-Balbir Singh, wherein he has admitted that he is not in possession of any document regarding the ownership of the

house in dispute. He also admitted that he is residing at Baddi (Himachal Pradesh). He has also admitted that his father had executed the agreement to sell the house in dispute on 06.02.2006 in favour of defendant No.1-Paramjit Singh and Paramjit Singh had filed the suit against his father, which was decreed by the Court of Sh.Gurjant Singh, the then learned Additional Civil Judge (Sr. Divn.), Hoshiarpur, vide judgment and decree dated 15.06.2010. He also admitted that warrants of possession have been issued by the executing Court and police has visited his house in respect with warrants of possession. The aforesaid admissions in the cross-examination of the petitioner/plaintiff shows that defendant No.1 is executing the decree dated 15.06.2010 in a lawful manner through Court. It appears that the present suit has been filed by the petitioner/plaintiff only to obstruct the execution of the said decree.

17. This Court in case **Sohan Singh Vs. Gurdas Chand & anr., 1990 PLJ 208** has laid down by referring to the provisions of Section 41(b) of the Specific Relief Act, 1963 (hereinafter called as “the Act”), that execution of a decree cannot be stayed by granting injunction in a subsequently instituted suit challenging the decree passed in the previous suit. Similar ratio of law has been laid down by the Orissa High Court in the case of **Bidulata Das Vs. Braja Behari Palit & ors., 1993 AIR (Orissa) 86.**

18. In view of the aforesaid ratio of law and as per the provisions of Section 41(b) of the Act, no injunction can be issued in favour of the petitioner/plaintiff to obstruct the execution of the decree dated 15.06.2010 particularly when he has not been able to

prima facie establish his ownership and possession over the house in dispute.

19. The plea raised by learned counsel for the petitioner that earlier the agreement to sell was executed in favour of one Ashok Kumar, he has also filed a suit for specific performance which was decreed in his favour and even the sale deed was executed in his favour through Court, are the pleas which are not available to the present petitioner/plaintiff and he cannot take any benefit thereof.

20. The cases relied upon by learned counsel for the petitioner are quite distinguishable on facts, as in the instant case the learned trial Court has not at all taken into consideration the legal implication of Section 41(b) of the Act.

21. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the impugned judgment passed by the learned first appellate Court. Resultantly, the present revision petition being devoid of merit is hereby dismissed.

18.10.2016

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**[ DARSHAN SINGH ]**  
**JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No