

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.8605 of 2016
Date of decision:20.12.2016

Lal Singh and another

... Petitioners

Vs.

Kulwant Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. G.S.Bhatia, Advocate
for the petitioners.

AMIT RAWAL J. (Oral)

The petitioner-defendants are aggrieved of the impugned order dated 12.05.2016, whereby, ad interim application moved under Order 39 Rules 1 and 2 of the Code of Civil Procedure was allowed. Following relief was sought in the civil suit:-

“Suit for permanent injunction restraining the defendants with the help of their agents, servants, associates or any other agency, illegally and without due course of law from dispossessing the plaintiffs from the land to the extent of 2/3rd share, i.e., 7 bighas 11 biswas 6 biswasis out of total land measuring 11 bighas 7 biswas bearing Khata no.568/527/929, 930 khasra no.3180/1/5-15, 3179/1/3-9, 3177/1/1-1, 3178/1/1-2 as per jamabandi for the year 200808 situated at village Ferozepur Tehsil Malerkotla, District Sangrur. The defendants

be also restrained from interfering in the peaceful possession of the plaintiffs over the land mentioned above or any other relief.”

The miscellaneous appeal filed against thereof has been dismissed, vide order dated 10.11.2016.

Mr. G.S.Bhatia, learned counsel appearing on behalf of the petitioner-defendants submits that the order under challenge do not conform to the statutory requirement of law, i.e., ingredients of Order 39 Rules 1 and 2 of CPC are conspicuously wanting. There has been misinterpretation of the documentary evidence attached along with respective pleadings. Had the same been appreciated, the opinion expressed in the impugned order would have been otherwise. The jamabandi, Annexure P-10 and khasra girdawari, Annexure P-11 *prima facie* proves, that the respondent-plaintiffs are not in possession. For establishing the claim of ad interim injunction, particularly with regard to forcible interference and possession, very strong *prima facie* case is required to be made out but the documents as noticed above, have not been appreciated in the correct perspective resulting into restraint order. In fact, Sardara Singh and Kartar Singh, predecessor-in-interest of both the parties were in joint ownership of more than 150 bighas of land in village Jhindan (Kuthala) and Bukanwala. In the year 1976, Sardara Singh purchased the suit property in the name of his sons, namely, Kulwant Singh, Bhura Singh alias Krishan Singh, plaintiffs and Major Singh. When this fact came to the knowledge of Kartar Singh, predecessor of defendants, a dispute was raised, but the same was settled in the month of July, 1979

amongst the family members and the suit property along with other property was divided between brothers and memorandum of partition dated 14.05.1980 was also reduced in writing. The suit land had fallen to the share of Sardara Singh, predecessor-in-interest of the plaintiffs. Though the same was purchased by Sardara Singh and the defendants since then are in possession of the suit property. All these factors have not been taken care of or noticed by the Courts below and thus, there is gross illegality and perversity in the orders under challenge. The statement of the plaintiff, Major Singh dated 23.06.2014 recorded before the Police Station leaves to an irresistible conclusion that there was partition between the parties, in essence, the memorandum of partition, *ibid*, had been acknowledged, therefore, the injunction was not liable to be granted. The granting of ad interim injunction tantamounts to decreeing the suit which is not permissible in law.

In support of his aforementioned contention, relies upon the ratio decidendi culled out by this Court in **Tej Kaur (deceased) through her LRs and others vs. Baldev Parshad and others 2012(5) RCR (Civil) 544.**

I have heard learned counsel for the petitioner-defendants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.G.S.Bhatia, for, the alleged memorandum of partition is not reflected in the revenue record. On the contrary, all the documentary evidence placed on record, noticed by the Courts below, reflects the

possession of the respondent-plaintiffs. The revenue record relied upon by the respondent-plaintiffs *prima facie* carries a presumption of truth subject to rebuttal, but in order to appreciate the controversy *vis-a-vis* ad interim, injunction, I am of the view that the findings arrived at by the Courts below granting the injunction are perfectly legal and justified, in view of the fact, the respondent-plaintiffs have been shown to be owners in possession of the suit property contrary to the stand taken in the written statement. For the purpose of granting injunction, *prima facie* case, in my view, had been made out. In case, the injunction had not been granted in favour of respondent-plaintiffs, it would have seriously caused inconvenience, therefore, the balance of convenience lied in favour of the respondent-plaintiffs.

No ground is made out for interference in the impugned order.

Accordingly, the revision petition stands dismissed.

It is made clear that nothing observed herein-above shall be construed as an expression of opinion on the merits of the pending case.

(AMIT RAWAL)
JUDGE

December 20, 2016

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No