

Civil Revision No. 1070 of 2017 (O&M)

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

Civil Revision No. 1070 of 2017 (O&M)

Date of decision: 14.2.2017

Sanjeev @ Sanju and another

...Petitioners

Versus

Shalinder @ Surinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ajay Chaudhary, Advocate
for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 30.1.2017 (Annexure P-2) passed by learned Additional District Judge, Panchkula, whereby civil miscellaneous appeal of the petitioner was dismissed, upholding order dated 29.9.2016 passed by learned trial court, allowing application of the plaintiff-respondent under Order 39 Rule 1 and 2 of the Code of Civil Procedure, petitioners have approached this Court by way of present petition under Article 227 of the Constitution of India, for setting aside the impugned orders.

Heard learned counsel for the petitioners.

During the course of hearing, learned counsel for the petitioners have fairly conceded that petitioners are neither claiming possession, nor ownership qua the suit property. Once this basic fact has gone undisputed

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before this Court that defendants-petitioners are neither claiming possession nor ownership over the suit property, learned courts below committed no error of law, while passing their respective impugned orders. Having said that, this Court feels no hesitation to conclude that the learned courts below were well justified to pass the impugned orders and the same deserve to be upheld.

A combined reading of both the impugned orders would make it crystal clear that three basic requirements of law were found existing in favour of the plaintiff. Plaintiff had made out a prima facie case and balance of convenience was also found in his favour. Had the interim injunction been denied to the plaintiff, he would have suffered an irreparable loss and injury. On the other hand, although defendants-petitioners filed their counter claim and sought interim injunction against the plaintiff, restraining him from raising any construction over the suit property, yet they miserably failed to make out a prima facie case in their favour and against the plaintiff. Considering all these relevant aspects of the matter, learned courts below came to the conclusion that plaintiff was entitled for interim injunction. Accordingly, the impugned orders were passed and the same deserve to be upheld, for this reason also.

Learned counsel for the petitioner submitted that by passing the impugned orders, learned courts below, as a matter of fact, virtually decreed the suit of the plaintiff, which was totally illegal. However, giving thoughtful consideration of this contention raised by learned counsel for the petitioner, it has been found wholly misplaced for the reason that the impugned order has been passed only while deciding the application under Order 39 Rule 1 and 2 CPC. Parties are yet to lead their evidence and only

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thereafter, learned court of competent jurisdiction shall record its findings.

It also goes without saying that any observation made by learned courts below, while deciding the application under Order 39 Rules 1 and 2 CPC, shall not influence the court, while deciding the suit on merits. However, no fault can be found with either of the impugned orders passed by learned courts below which have not been found suffering from any patent illegality or perversity and deserve to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

14.2.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No