

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1729-2015

Decided on: 23.08.2017

Mange

.... Petitioner

Versus

Sunita

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Abhinav, Advocate, for
Mr. Vikram Singh, Advocate,
for the petitioner.

RAMESHWAR SINGH MALIK, J (ORAL)

Present revision petition, filed under Article 227 of the Constitution of India, at the hands of plaintiff, is directed against the order dated 28.01.2015 (Annexure P-5) passed by the learned Additional District Judge, whereby miscellaneous appeal of the petitioner was dismissed and the order dated 22.12.2014 (Annexure P-4) passed by the learned trial Court, was upheld, dismissing the application of the plaintiff-petitioner under Order 39 Rule 1 and 2 read with Section 151 CPC, during pendency of his suit for permanent injunction.

Notice of motion was issued.

When the case came up for hearing on 20.01.2016, the following order was passed:-

“Even as I was concluding the pronouncement of the order, the counsel for the respondent pleads that she has parted with a large consideration and the plaintiffs must be willing to accommodate the defendant in a share which their brother was entitled to.

Counsel for the petitioner states that he will take appropriate instructions whether any settlement is possible.

Adjourned to 03.02.2016.”

Thereafter, as many as 5 adjournments have taken place, but learned counsel for the respondent has not informed this Court about the outcome of any efforts made for an amicable settlement. Neither anybody has come present on behalf of the respondent to oppose this revision, nor any request for pass over has been made.

Heard learned counsel for the petitioner.

A combined reading of both the impugned orders passed by the learned first appellate Court as well as the learned trial Court would show that suit land is joint between the parties. Plaintiff-petitioner has filed the suit for permanent injunction on the ground that he has was in settled physical possession over the suit land.

Learned counsel for the petitioner has shown a copy of jamabandi for the year 2007-2008, wherein the petitioner has been shown in possession over khasra No.40, killa No.5/1 (6 kanal 5 marlas). Once the possession of the petitioner has been found recorded in the jamabandi, plaintiff-petitioner shall be entitled for an ad-interim injunction, so that his suit for permanent injunction may not be rendered infructuous. Since the learned Courts below could not appreciate this material aspect of the matter, while passing the impugned orders, a serious prejudice was caused to the petitioner, because of which the impugned orders cannot be sustained.

Once the cultivating possession of the petitioner was found recorded in the revenue record, there would be a prima facie case in his favour. Since the petitioner-plaintiff has been found continuing in cultivating possession over the suit land, balance of convenience would also be in his favour. In such a situation, if ad interim injunction is not granted

in favour of the petitioner, during pendency of his suit for permanent injunction, he will suffer irreparable loss and injury. Thus, since the plaintiff-petitioner has fulfilled all the three basic ingredients for granting ad interim injunction, which material fact was not properly appreciated by the learned Courts below, while passing their respective impugned orders, the same cannot be sustained for this reason as well.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders have been found suffering from patent illegality, the same cannot be sustained. Accordingly, impugned order dated 22.12.2014 (Annexure P-4) as well as order dated 28.01.2015 (Annexure P-5) passed by the learned Courts below are hereby set aside.

Application moved by the plaintiff-petitioner under Order 39 Rules 1 and 2 read with Section 151 CPC would stand allowed. Consequently, parties are directed to maintain status quo regarding possession as well as alienation of the suit property, during pendency of the suit of the plaintiff-petitioner.

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

(RAMESHWAR SINGH MALIK)
JUDGE

23.08.2017
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No