

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 25.09.2017

1. CR No.1965 of 2015 (O&M)

Anju Lata and another

... Petitioners

Vs.

Bir Singh and others

... Respondents

2. CR No.6880 of 2015 (O&M)

Anju Lata and another

... Petitioners

Vs.

Bir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Gaurav Tyagi, Advocate
for the petitioners.

Mr. Sudhir Aggarwal, Advocate
for respondent No.2.

RAMESHWAR SINGH MALIK, J. (ORAL)

Both these civil revision petitions, arising against the same
impugned judgment dated 10.02.2015, whereby two identical miscellaneous

appeals filed by two sets of defendants were allowed by the learned Additional District Judge, are being disposed of together vide this common order, with the consent of learned counsel for the parties, as property is the same and parties are also the same. However, for the facility of reference, facts are being culled out from CR No.1965 of 2015 (Anju Lata and another Vs. Bir Singh and others).

Notice of motion was issued and in the meantime, respondents were restrained from alienating the suit property.

Heard learned counsel for the parties.

Plaintiffs-petitioners filed suit for declaration with consequential relief of permanent injunction. Along with the suit, they also filed an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure ('CPC' for short). After hearing learned counsel for the parties and going through the record of the case, the learned trial Court allowed the application under Order 39 Rules 1 and 2 CPC moved by the plaintiffs-petitioners vide its order dated 05.06.2012. Said order was passed by the learned trial Court, after satisfying itself on all the three basic ingredients for granting ad-interim injunction. It has been so recorded by the learned trial Court in paras 7, 8 and 9 of its order (Annexure P-2).

Two separate but identical miscellaneous appeals were filed by two sets of defendants against the order dated 05.06.2012 (Annexure P-2) passed by the learned trial Court. These two miscellaneous appeals came to be allowed by the learned Additional District Judge vide impugned judgment dated 10.02.2015 (Annexure P-3). Hence these two civil revision petitions, at

the hands of plaintiffs.

A combined reading of both the orders passed by the learned Courts below vide Annexures P-2 and P-3 will make it crystal clear that the learned trial Court rightly appreciated true facts of the case as well as the relevant provisions of law, so as to grant ad-interim injunction in favour of the plaintiffs-petitioners, restraining defendants No.2 and 3 from further selling and alienating the suit land and properties in question in any manner. However, the learned Additional District Judge fell in serious error of law, while setting aside the self-contained and well reasoned order dated 05.06.2012 (Annexure P-2) passed by the learned trial Court, while allowing the miscellaneous appeals of the defendants. It is so said because the impugned order passed by the learned Additional District Judge will certainly encourage multiplicity of litigation between the parties and the petitioners-plaintiffs shall be forced to file another suit, the moment suit property is alienated at the hands of the defendants. It goes without saying that multiplicity of litigation between the parties must be avoided, because that will serve no purpose. Having said that, this Court feels no hesitation to conclude that since the learned Additional District Judge exceeded his jurisdiction, while passing the impugned order dated 10.02.2015, a manifest injustice has been caused to the plaintiffs-petitioners, because of which the impugned order cannot be sustained.

The basic requirement of law for granting ad-interim injunction in favour of the plaintiffs, while considering their application under Order 39 Rules 1 and 2 read with Section 151 CPC, is that they ought to have fulfilled

all the three basic ingredients. That is what was specifically dealt with by the learned trial Court in paras 7, 8 and 9 of its order dated 05.06.2012 (Annexure P-2). Since the petitioners-plaintiffs also alleged suit property to be ancestral and they have produced on record the relevant jamabandi for the year 1955-56, perusal whereof would make out a prima facie case in favour of the plaintiffs.

Further, once a prima facie case was made out in favour of the plaintiffs-petitioners, balance of convenience was also found in their favour. Again, 3rd ingredient was also fulfilled, because had the defendants-respondents sold the suit property, an irreparable loss would have been caused to the plaintiffs-petitioners. Since all these three basic ingredients were not correctly appreciated by the learned Additional District Judge, while passing the impugned order dated 10.02.2015, the same has resulted in miscarriage of justice and it cannot be sustained, for this reason also.

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 since the impugned order dated 10.02.2015 in both these revision petitions has been found suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 10.02.2015 passed by the learned Additional District Judge in both the civil revision petitions is hereby set aside.

Consequently, the order dated 05.06.2012 (Annexure P-2) passed by the learned trial Court would stand restored and continue to operate in

favour of the plaintiffs-petitioners till their suit for declaration with consequential relief of permanent injunction is decided by the learned trial Court.

Resultantly, with the abovesaid observations made and directions issued, both these revision petitions stand allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

25.09.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No