

122 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CR No. 1691 of 2017
DECIDED ON: MARCH 08, 2017

DHARAM PAL AND OTHERS

....PETITIONERS

VERSUS

HARVINDER KUMAR & ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Satbir Rathore, Advocate
 for the petitioners.

JASPAL SINGH, J

Through this instant petition preferred under Article 227 of the Constitution of India, petitioner has sought the quashing of order dated July 29, 2015 (Annexure P-4) passed by learned Civil Judge (Jr. Division), Mukerian as well as order dated December 09, 2016 (Annexure P-5) passed by learned Additional District Judge, Hoshiarpur, vide which an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (for short 'Code') filed by the petitioners/plaintiffs was dismissed.

The contention of learned counsel for the petitioner is that petitioners have filed a suit for permanent injunction restraining the defendants from changing the nature of the suit property, cutting and removing the trees and dismantling the boundary wall and old structure from the suit land shown red in site plan indicated by letters ABCD situated within Lal Lakir of Village

Harse Mansar, Tehsil Mukerian, Distt. Hoshiarpur. Alongwith the suit the petitioners/plaintiffs have also filed an application under Order XXXIX Rule 1 and 2 of the Code seeking interim injunction till the disposal of suit but that application has been illegal and erroneously dismissed by learned trial Court vide impugned order dated July 29, 2015 and an appeal preferred against the said order has also been dismissed by learned lower Appellate Court vide order dated December 09, 2016 by ignoring a well settled principles governing the grant of injunction as well as evidence available on record. It is a categoric case of the petitioners/plaintiffs that their ancestors were proprietors in the village and after their demise they are the proprietors in the village who inherited the property of their ancestors. The ancestors of the petitioners/plaintiffs had constructed a Thakur Dwara and shop in the village and one Sant Ram was appointed as Pujari for rendering services in the Thakur Dwara. Prior to the appointment of Sant Ram as Pujari of Thakur Dwara, a writing dated April 01, 1922 was obtained by the grand father of the petitioners/plaintiffs from Sant Ram in which he promised that he would render services in Thakur Dwara selflessly and in case he fails to perform the services to the Thakur Dwara, the proprietors would be at liberty to evict him and the said writing was duly signed by Sant Ram and attested by Girdhari Lal and Mela Ram. Since the time of ancestors of the petitioners/plaintiffs the suit property is being used by the common worshipers for religious purposes and the people daily come and pay their obeisance in the temple, which is the ownership of Thakur Dwara. However, respondents/defendants threatened to take its possession forcibly. In order to grab it for their personal use and benefits they are threatening to change the nature of the suit property by demolishing the old structure, petitioners were

constrained to knock the doors of Civil Court. He further contended that both the Courts below have failed to appreciate the nature of the suit property i.e. religious one where people of the village daily go to pay obeisance and in case defendants succeeded in dispossessing the petitioners from the suit property then the petitioners as well as other villagers would suffer a great loss. Thus, the impugned orders passed by both the courts below are against the settled canons of law governing injunction and are deserves to be set aside.

This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the petitioners but find the same to be without any legal or factual weight.

The extent and scope of jurisdiction of the lower Appellate Court to interfere with the order passed by the trial Court in exercise of its jurisdiction under Order 39, rules 1 and 3, has been discussed in **Smt. Vimla Devi v. Jang Bahadur**; AIR 1977 Rajasthan 196. A learned Single Judge of that Court has summed up the legal position in the following words:

“The order refusing temporary injunction of a discretionary character.

Ordinarily Court of appeal will not interfere with the exercise of discretion by the trial Court and substitute for its own discretion. The interference with the discretionary order, however, may be justified if the lower Court acts arbitrarily or perversely, capriciously or in disregard of sound legal principles or without considering all the relevant records.

The mere possibility of the Appellate Court coming to a difference conclusion on the same facts and evidence will also not justify interference.”

The similar view has been expressed by this court in the case of

Krishan Kumar Vs. State of Haryana, 1992(1) RLR 207. In that case this court has observed-

“A perusal of the Appellate Court's order shows that it has not assigned any cogent reason to set aside the direction exercised by the trial Court. The lower Appellate Court has not demonstrated as to how on admitted facts principles of law have been wrongly applied. I am, therefore, of the opinion that the lower Appellate Court was not justified in setting aside the order and interfering in the discretion exercised by the trial Court.”

Adverting to the facts of the case in hand, though the petitioners have claimed themselves to be owner-in-possession of Thakur Dwara and adjoining shop but to the utter surprise there is no documentary evidence except their bald assertions. No document showing their ownership has seen in the light of the day. The mere fact that their forefathers were the proprietors of the village and after their demise, they are the proprietors of the village does not *ipso facto* mean that the property in dispute is in the ownership of Thakur Dwara and after the demise of Sant Ram who was looking after the affairs of Thakur Dwara, his legal heirs are rendering services. Thus, learned trial court has rightly dismissed the application. Similarly learned lower Appellate Court also finding no substance in the appeal dismissed the same.

Both the courts below have exercised its jurisdiction in a judicial manner while dismissing the application as well as appeal. Moreover, during the course of arguments learned counsel for the petitioners could not point out any infirmity or illegality in the impugned orders. Thus, this Court is of the considered view that the same are absolutely in consonance with the legal proposition applicable to the facts and circumstances of the case in hand.

Instant petition is nothing but devoid of merits. As such, it stands dismissed.

MARCH 08, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*