

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.1786 of 2017(O&M)
Date of Decision-12.09.2017**

Anil Aggarwal and others ... Petitioners

Versus

Brijeshwar Swaroop ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajiv Kataria, Advocate with
Anil Aggarwal-petitioner in person.

Mr. Raj Kumar Gupta, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 14.12.2016 passed by Additional District Judge, Jind, whereby appeal against the order dated 12.12.2015 passed by Additional Civil Judge (Senior Division), Safidon was dismissed.

[2]. Plaintiff/Brijeshwar Swaroop filed a suit for permanent injunction seeking to restrain the defendants/petitioners from interfering in his peaceful possession over the suit land.

[3]. Trial Court after noticing the factum of sale deed dated 25.09.1957 and consistent revenue record thereafter in favour of the plaintiff showing him to be in exclusive possession over the suit property, granted the prayer in terms of Order 39 Rules 1 and 2 CPC.

[4]. Feeling dissatisfied with the order dated 12.12.2015 passed by Additional Civil Judge (Senior Division), Safidon, defendants/petitioners filed an miscellaneous appeal before the Additional District Judge, Jind. The appeal was also dismissed along with application for condonation of delay.

[5]. Against the order dated 12.12.2015, the appeal was preferred on 18.08.2015 and the reason assigned for delay in filing the appeal was various litigations in which parties were involved in civil and criminal cases. The accident of son of petitioner No.1 and health grounds were also stated to be the reasons for filing the appeal late.

[6]. The basic litigation involved in the present case is also subject matter of connected revision petitions i.e. CR No.2083 of 2016 titled Brijeshwar Swaroop and others Vs. Adish Aggarwal and others and CR No.6659 of 2016 titled Aadish Aggarwal and another Vs. Brijeshwar Swaroop and another, which are being decided by order of even date. The plaintiff was found to be in continuous possession of the suit land in terms of execution of sale deed dated 25.09.1957 and thereafter, in terms of revenue record viz. *jamabandis* for the year 1965-66 and 2009-10. Exclusive possession of the plaintiff at this stage cannot be commented upon in the absence of any evidence which may be led by the parties at the relevant time.

[7]. In view of possession of the plaintiff over the suit property, the ingredients of Order 39 Rules 1 and 2 viz. existence of *prima facie* case, balance of convenience and irreparable loss in the event of non-grant of *ad interim* injunction are in favour of the plaintiff.

[8]. In view of above, this Court deem it appropriate to maintain the order dated 14.12.2016 passed by Additional District Judge, Jind, vide which order dated 12.12.2015 passed by Additional Civil Judge (Senior Division), Safidon was upheld and there is no necessity of deciding any application for condonation of delay as despite the condonation of delay, the net result of the controversy is not going to be changed in view of consideration of application under Order 39 Rules 1 and 2 CPC on the basis of settled principles of law.

[9]. In view of above, I find no error of jurisdiction in the orders passed by the Courts below. The present revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

12.09.2017

Prince

Whether reasoned/speaking

Yes/No

Whether Reportable

Yes/No