

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

**CR No.191 of 2017 (O&M).
Date of Decision: 07.04.2017.**

Pardeep Balu

....Petitioner.

VERSUS

Sikander Kaur Pannu and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sandeep Chopra, Advocate for the petitioner.

SNEH PRASHAR, J.

CM-5222 & 7336-CII-2017

Allowed, as prayed for.

CR-191-2017 (O&M)

This revision petition is directed against the judgment dated 07.10.2016 passed by learned Additional District Judge, Ludhiana by virtue of which the appeal filed by the petitioner was disposed of with modification in the order dated 26.03.2014 passed by learned Civil Judge (Junior Division), Ludhiana vide which the application under Order XXXIX Rules 1 and 2 read with Section 151 of the Civil Procedure Code (for short, "the CPC") filed by respondent No.1-plaintiff Sikander Kaur Pannu seeking ad-interim injunction was disposed of with direction to both the parties to maintain status quo.

The submissions made by Mr. Sandeep Chopra, learned

counsel representing the petitioner have been heard.

Precisely, the facts are that Smt. Sikander Kaur Pannu (respondent No.1) filed a suit for permanent injunction seeking to restrain the defendants (petitioner and proforma respondents No.2 and 3) from interfering in her peaceful possession over Plots No.4 and 5 measuring 800 square yards comprised in Khewat No.597, Khatoni No.747, Khasra No.1733, Khewat No.89, Khatoni No.112, Khasra No.1709, Khewat No.88, Khatoni No.111, Khasra No.1708 as per Jamabanbdi for the year 2004-2005 situated at village Daad, Tehsil and District Ludhiana (known as New Model Town Extension, Chhabra Colony, Ludhiana). The measurements of the plots were mentioned in the head note of the plaint and it was pleaded that the total area is 800 square yards. Respondent No.1-plaintiff claimed to be owner-in-possession of the plots on the basis of a sale deed dated 15.04.1999 registered on 16.04.1999. After purchase of the plots, a boundary wall was alleged to have been constructed around the plots. It was further pleaded that the defendants had tried to interfere in the possession of the plaintiff on 13.11.2008 although they had no right, title or interest in the same which necessitated filing of the present suit. Alongwith the suit, an application under Order XXXIX Rules 1 and 2 read with Section 151 CPC praying for ad-interim injunction was filed by the plaintiff-respondent No.1.

In their written statement filed by proforma respondents-defendants No.2 and 3, they claimed to be the true owners in possession in Plot No.5 on having purchased the same from M/s Chhabra Land and Credit Pvt. Ltd. in installments. A sale deed had been duly executed and registered in their favour on 07.01.2000. Huge construction i.e. a double storied house had been raised on the said plot. The water, sewerage and electricity

respondents filed a counter claim praying for a decree of permanent injunction restraining plaintiff-respondent No.1 from dispossessing them or from interfering in their peaceful possession over Plot No.5. An application for ad-interim injunction was also filed.

After hearing counsel for the parties, learned trial court finding that there was a prima facie case in favour of both the parties and the balance of convenience also tilted in favour of both of them, directed the parties to maintain status quo till disposal of the case.

The petitioner and respondents No.2 and 3 preferred an appeal. Learned first appellate also directed both the parties to maintain status quo with regard to their respective possession on Plots No.4 and 5 and recorded the following findings:-

“It is evident from the contents of the aforesaid application under order 6 rule 17 that plaintiff has admitted that counter claimant Sushma Balu is in possession of the plot no.5 as mentioned in her counter claim at the time of disposal of the present appeal. The trial court has not given any findings in its order that which party was in possession of plot no.5 of the suit plot at the time of filing of the suit/counter claim. At this stage, any findings given by this court regarding the fact that which party was in possession in plot no.5 at the time of filing of suit, would cause prejudice to the rights of the respondents/ plaintiffs. In disposing of the application under order 39 rule 1 and 2, the paramount consideration is the preservation of the property. In view of the aforesaid discussion, it is manifest that at this stage the possession of

counter claimant Sushma Balu is not disputed in plot no.5 as mentioned in the counter claim. This court has purposely not gone to the controversy that which party was in possession of the suit land i.e plot no.5 for the reason that such finding would have an impact on the subsequent proceedings i.e disposal of application for amendment of pleadings moved by the plaintiffs. Therefore, this court disposed of the present appeal with the observations that at this stage, plaintiff is in possession in plot no.4 as mentioned in the head note of the plaint and counter claimant/defendant is in possession of plot no.5 as mentioned in the head note of the counter claim. Both the parties are directed to maintain status quo with regard to their respective possession on the aforesaid plots till the adjudication of the case by the Trial Court. Accordingly, the present appeal is disposed off and the order dated 26.3.2014 passed by the Ld. Trial Court is hereby modified with the aforesaid observation.”

As indicated in the above order dated 07.10.2016, respondent No.1-plaintiff after disposal of the stay applications by learned trial court had filed an application under Order VI Rule 17 CPC for amendment in the plaint on the ground that petitioner and respondents No.2 and 3 (defendants) have raised construction over Plot No.5 during pendency of the suit in defiance of the order of injunction. Accordingly, amendment in the prayer clause has been sought in order to incorporate prayer for grant of mandatory injunction directing respondents No.2 and 3 to restore the possession of Plot

Whether the construction on Plot No.5 had been raised during pendency of the suit and in violation of the injunction order passed by learned trial court and whether the amendment sought on that ground had to be allowed or not, would be a matter to be decided by learned trial court. At present, the position is that respondent No.1-plaintiff admits possession of defendants-proforma respondents No.2 and 3/counter claimants on Plot No.5. As regards Plot No.4, as observed by learned first appellate Court, prima facie, it proves to be in possession of respondent No.1-plaintiff. With the said observations, learned first appellate Court has rightly directed the parties to maintain status quo with regard to their respective possession on the plots in question till decision of the suit by learned trial court. While it will be for respondent No.1-plaintiff to prove ownership qua Plots No.4 and 5 and her possession as presented by her, it will be for the defendants-petitioner and proforma respondents No.2 and 3 to prove their ownership, possession and the period of construction of the house on plot No.5 by leading substantial and reliable evidence. It is the evidence which will clarify the correct identity and state of affairs at the plots in dispute.

Learned counsel could demonstrate no illegality or perversity in the order passed by learned first appellate Court and the instant revision petition being devoid of merit is hereby dismissed.

(SNEH PRASHAR)
JUDGE

07.04.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**