

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 128

Civil Revision No.2663 of 2017 (O & M)

Date of Decision: April 17, 2017

Sachin & another

.... PETITIONERS

VERSUS

Ram Rattan & another

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. M.R. Sharma, Advocate, for the petitioners.

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Jaspal Singh, J

CM No.8074-CII of 2017

Application is allowed as prayed for.

CR No.2663 of 2017 (O & M)

1. By virtue of the instant petition preferred under Article 227 of the Constitution of India, petitioners have sought setting aside of order dated November 04, 2016 passed by the Civil Judge (Junior Division), Kaithal, whereby an application moved under Order XXXIX Rule 1 & 2 CPC has been dismissed, as well as judgment dated January 11, 2017 passed by the Additional District Judge, Kaithal, vide which, an appeal preferred by the petitioners against order dated November 04, 2016 has been dismissed.

2. While assailing the impugned orders, it has been argued with vehemence by learned counsel for the petitioner that the same are absolutely against the evidence available on file and settled canons for governing the grant of injunction. Both the courts below have erred in dismissing the application moved by the petitioners - plaintiffs under Order XXXIX Rules 1 & 2 CPC. Both the courts below have fallen in error which has resulted into causing of great prejudice and hardship to the petitioner – defendant while allowing the application for ad-interim injunction.

3. Learned counsel for the petitioner has further contended that petitioners – plaintiffs are owners in possession of the suit property which was transferred by the defendant, in their favour, vide release deed No.1084/1 dated October 08, 2015. However, the defendant clandestinely obtained an order dated October 03, 2016 from the court of SDO (Civil), Kaithal, whereby the aforesaid release deed was set aside under the provisions of Maintenance & Welfare of Parents and Senior Citizens Act, 2007 (for short, 'Act'). Learned counsel has contended that order dated October 03, 2016 was passed without any notice to the petitioners – plaintiffs, therefore, the same was nullity. Moreover, the said order was passed by the SDO (Civil), whereas the same was required to be passed by the Tribunal consisting of Chairman and two members, and therefore, the same is not binding upon the plaintiffs. There was no stipulation in the release deed with regard to maintenance of executor by the beneficiary or by his parents, and therefore, no order for setting aside the release deed could have been passed. Thus, impugned order dated November 04, 2016 passed by the trial court, as upheld by the lower appellate court vide its order dated January 11, 2017 are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of the instant revision petition.

4. After bestowing due consideration to the aforesaid submissions made by learned counsel for the petitioners and scrutinizing the impugned orders and the documents available on file, this Court is of the considered view that the impugned orders do not suffer from any infirmity, illegality or perversity, rather the same are absolutely in consonance with the settled principles of law governing the grant of injunction.

5. Before proceeding to decide the matter in controversy on merits, it would be desirable to highlight the extent and scope of jurisdiction of the lower appellate court or the revisional court to interfere with the order passed by the trial court in exercise of its discretion under Order XXXIX Rules 1 & 2 CPC. The extent and scope of jurisdiction was discussed at length by the Rajasthan High Court in Vimla Devi Vs. Jang Bahadur, AIR 1977 Rajasthan 196 wherein the legal proposition was summed up 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 it 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 different conclusion on the same facts and evidence will also not justify interference.”

6. Similar view has been expressed by this Court in Krishan Kumar v. The State of Haryana and another, 1992(1) RRR 433 (P&H) : 1992(1) Revenue Law Reporter 207, wherein this Court has observed as under:-

“A perusal of the appellate court’s order shows that it has not assigned any cogent reason to set aside the discretion exercised by the trial court. The lower appellate court has not demonstrated as to how admitted facts and principles

of law have been wrongly applied. This Court, therefore, is 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.”

7. Both the above referred judgments were further relied upon by this Court while rendering pronouncement in case Guru Nanak Education Trust v. Balbir Singh, 1995 AIR (Punjab) 290 : 1995(3) R.R.R. 721.

8. Defendant (grand-father of plaintiffs) is owner of agricultural land measuring 19 Kanal and 15 Marlas of land, fully detailed and prescribed in para No.1 of the plaint. Defendant is suffering from Paralysis and Diabetes, due to which, he lost his eye sight. He has two sons and two daughters, who are married. Sons, namely Rajender and Vijender are living separately. Defendant, in the hope that his sons/grandsons will take care of him with basic physical needs and basic amenities, transferred the suit property in favour of his grandsons (plaintiffs) vide release deed No.1084/1 executed on October 08, 2015. Defendant who suffering from Paralysis, Diabetes, lost his eye sight, certainly requires great care and attention. The plaintiffs alongwith their fathers were liable to maintain the defendant but they failed to do so. These factors necessitated the defendant (grandfather of plaintiffs) to knock the doors of SDO (Civil), Kaithal whereafter order dated October 03, 2016 was passed setting aside the release deed executed on October 08, 2015 and registered on September 19, 2015.

9. Undisputably, the plaintiffs have filed the suit for declaration and injunction on the basis of release deed No.1084/1 executed on October 08, 2015 and registered on September 19, 2015. However, the said release deed has been set aside vide order dated October 03, 2016

passed by the SDO (Civil), Kaithal, exercising the powers of Tribunal under the provisions of the Act. There was an efficacious and proper remedy available for the plaintiffs to file an appeal against the aforesaid order passed by the SDO (Civil). Instead, they approached the civil court by taking a plea that they had no right of appeal.

10. The Division Bench of this Court in ***Paramjit Kumar Saroya vs. Union of India and another, AIR 2014 Punjab 121*** has held that Section 16(1) of the Act which provides for an appeal, must be read to provide for a right of appeal to any of the affected parties as there is no negative provision in the Act, denying the right of appeal to the parties other than the parents and senior citizens. The law set down by the Division Bench of this Court was again followed by this Court in ***Balbir Kaur vs. Presiding Officer –cum- S.D.M. of the Maintenance & Welfare of Senior Citizen Tribunal, Pehowa, District Kurukshetra and others, 2015(3) PLR 688***, wherein it has been observed that appropriate remedy against any of the fellow who had been aggrieved by any act of the Tribunal is to file an appeal against the aforesaid order. The jurisdiction of the civil court in this respect is clearly barred to entertain the suit. In this view of the matter, once the remedy of appeal is available to the petitioners – plaintiffs, there is no illegality or infirmity in the orders passed by the courts below in refusing the injunction to the plaintiffs. The pleas with regard to passing of order by SDO (Civil) in his capacity; non stipulation of any undertaking to maintain the executor and its effect on the order of setting aside the release deed, are also to be looked into by the appellate authority prescribed under the Act. It is also pertinent to mention here that plaintiffs' fathers were made party before the SDO (Civil), Kaithal and no objection was raised by them that plaintiffs have not been made party or they also be given an opportunity of

hearing, in as much as, it cannot be presumed that plaintiff No.2 (a minor) and plaintiff No.1 (aged 19 years) would be self-dependent and living separately from their parents. It is also not the case of plaintiffs that they are living separately from their parents, thus, the plea that they had no notice of proceedings before the SDO (Civil), Kaithal, is also not acceptable. There is nothing on the record to suggest that courts below have acted arbitrarily, perversely, capriciously or in disregard of sound legal principles or without considering all the relevant records. Thus, the impugned order and judgment do not call for any interference by this Court, especially in the circumstances that the courts below have exercised the discretion in a very judicious manner.

11. As a net result of the aforesaid discussion, this Court is of the considered view that the instant petition is devoid of merits, and as such, the same is dismissed, whereby impugned order dated November 04, 2016 passed by the trial court as well as order dated January 11, 2017 passed by the lower appellate court are upheld.

12. However, any observation made in this judgment shall have no bearing on the merits of the main case which shall be decided by the trial court independently on the basis of evidence brought on record by the parties in respect of their respective pleadings, that too, without being influenced by any observation made herein.

13. No order as to costs.

April 17, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No