

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.324 of 2016

Date of decision:10.7.2017

Kailash Devi

...Petitioner

Versus

Dinesh Chaudhary and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Sumit Jain, Advocate for the petitioner.
Mr.Prantap Sharma, Advocate for respondent No.2.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 16.10.2015 passed by the learned first appellate court, whereby miscellaneous appeal of the defendants against the order dated 5.3.2015 of the learned trial Court was allowed, plaintiff has approached this Court by way of present civil revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued.

Heard learned counsel for the parties.

It has gone undisputed before this Court that the petitioner-plaintiff is the absolute owner in possession over the suit property. Once her ownership as well as possession is not being disputed by the defendants-respondents, plaintiff was entitled for interim injunction in her suit for permanent injunction, which was rightly granted by the learned trial court

vide its order dated 5.3.2015. Under such circumstances, the learned Additional District Judge has completely misread the true facts of the case as well as undisputed fact situation noticed hereinabove, while passing the impugned order and the same cannot be sustained. In this view of the matter, plaintiff-petitioner has made out a strong prima facie case in her favour, satisfying all the three basic ingredients for granting ad interim injunction in her favour.

Neither her ownership nor her possession is in dispute. In case, the interim injunction is not granted in her favour, she will definitely suffer irreparable loss and injury. Since the plaintiff-petitioner is an old lady and her ownership as well as possession are not in dispute, balance of convenience is also in her favour and against the defendants-respondents. Having said that, this Court feels no hesitation to conclude that the learned Additional District Judge exceeded his jurisdiction, while passing the impugned order and the same deserves to be set aside.

During the course of hearing, learned counsel for the respondents could not address any meaningful arguments in support of the impugned order passed by the learned first appellate court. In fact, the impugned order has been found suffering from patent illegality as the same is running counter to the undisputed facts of the case. Application moved by the plaintiff-petitioner under Order 39 Rules 1 and 2 read with Sections 151 of the Code of Civil Procedure was rightly allowed by the learned trial court, vide its order dated 5.3.2015, which deserves to be upheld and restored.

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 passed by the learned Additional District Judge has been found suffering from patent illegality, the same cannot be sustained. Accordingly, the impugned order dated 16.10.2015 passed by the learned Additional District Judge is hereby set aside. The order dated 5.3.2015 passed by the learned trial court would stand restored.

Resultantly, with the above-said observations made, the present civil revision petition stands allowed, however, with no order as to costs.

10.7.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No