

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

CR No.3097 of 2014

Date of decision:3.7.2017

Ramesh Chand

...Petitioner

Versus

Pramod and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Lokesh Sinhal, Advocate for the petitioner.
Mr.Ankush Chaudhary, Advocate for respondents No.1 and 2.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the order dated 12.4.2014 (Annexure P-9) passed by the learned trial Court, whereby an application moved by the defendants-respondents, providing police help for their re-entry in the suit property was allowed, plaintiff has approached this Court by way of instant civil revision petition filed under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued and operation of the impugned order was stayed.

Heard learned counsel for the parties.

It is a matter of record and not in dispute that the impugned order came to be passed by the learned trial Court on the application moved by the defendants, seeking police help so as to allow them to enter in the residential house in question. It was their own pleaded and argued case that

the defendants were licensees in the residential house and not the owners. Ownership of the plaintiff over the suit property had never been in question. Application moved by the defendants-respondents would make it crystal clear that they were not in actual physical possession on any part of the residential house in question.

It has also been fairly conceded by the learned counsel for the respondents that they were in symbolic possession. In such a situation, a bare perusal of the impugned order would show that the learned trial court has exceeded its jurisdiction, while providing police help to the defendants-respondents, ensuring their re-entry in the residential house, which is the absolute ownership of the plaintiff. This could not have been done during the pendency of the suit. It is so said because right of the defendants-respondents is yet to be crystalised and that would be only after the suit filed by the plaintiff-petitioner is decided on the basis of appreciation of respective evidence brought on record by both the parties.

An interim relief in the present form, as granted to the defendants by the learned trial Court by passing the impugned order, could not have been granted, because the defendants were not entitled for the said interim relief. Admittedly, the civil suit is still pending and defendants' evidence is going on.

In view of the above-said undisputed fact situation obtaining on the record of the instant case, it can be safely concluded that the learned trial court misdirected itself, while passing the impugned order and the same cannot be sustained. In fact, the impugned order has been found suffering from patent illegality because of which a serious prejudice has been caused

to the plaintiff-petitioner.

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 has been found suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 12.4.2014 passed by the learned trial Court is hereby set aside. However, keeping in view the peculiar facts and circumstances of the case and also the relationship between the parties, the learned trial court is directed to expedite the decision of the suit.

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

3.7.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

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