

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.110

Civil Revision No. 3026 of 2017
DECIDED ON: May 26, 2017

KISHAN SINGH & ANOTHER

..PETITIONERS

VERSUS

SUKHDEV SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. M.S. Sachdev, Advocate,
for the petitioner.

JASPAL SINGH, J.

By virtue of the instant revision petition preferred under Article 227 of the Constitution of India, petitioners have sought the setting aside of order dated January 11, 2017 passed by the learned Additional District Judge, Jalandhar (Annexure P-1) as well as order dated August 04, 2015 (Annexure P-2) passed by the learned Civil Judge (Jr. Divn.), Jalandhar vide which an application filed by the petitioner under Order XXXIX Rule 1 & 2 read with Section 151 of the Code of Civil Procedure (for short 'Code'); has been dismissed.

Briefly stated the facts giving rise to the instant petition are that the petitioner/plaintiff filed a suit for declaration while challenging transfer deed in respect of the land fully detailed and described in the head note of the plaint as well as for permanent injunction restraining the defendant from in any manner obstructing the petitioner/plaintiff from using the tubewell situated within specific khasra numbers for irrigation of the entire land received by petitioner/plaintiff and was being irrigated from the said tubewell.

While assailing the impugned orders it has been argued with vehemence by learned counsel for the petitioner that the same are absolutely against the settled canons law and principles governing grant of injunction as well as evidence available on file. Misappreciation of evidence and documents available on record has resulted into miscarriage of justice.

Developing his arguments, it has been contended by learned counsel for the petitioner that petitioner has prayed for the grant of temporary injunction restraining the defendant from in any manner obstructing the petitioner/plaintiff from using the tubewell situated within specific khasra numbers for irrigation of the entire land received by petitioner/plaintiff and was being irrigated from the said tubewell and further that the land was never transferred by him by way of transfer deed. Though, in such a situation, declining an injunction in favour of petitioner has resulted into a great loss, injury and annoyance by not getting water from the tubewell due to obstruction created by respondent/defendant for the use of the same by the petitioner/plaintiff. In fact, the judgment and decree dated July 23, 2012 is under challenge as the same is absolutely

wrong, illegal, void and is not binding upon the rights of the petitioner/plaintiff. The judgment and decree date July 23, 2012 passed in Civil Suit No. 166 of 2011 as well as dismissal of counter claim preferred by present petitioner/plaintiff has nothing to do with the disposal of an application under Order XXXIX Rule 1 and 2 of the Code, especially when the same is under challenge. He further contended that petitioner is suffering a great prejudice and his land would render uncultivable, if he is not allowed to irrigate the land from the tubewell in question. Thus, the impugned orders passed by both the courts below being against the principles governing grant of injunction are liable to be set aside by way of acceptance of instant revision. Resultantly, an application moved by the petitioner/plaintiff under Order XXXIX Rules 1 and 2 of the Code deserves to be allowed.

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 of the Code. 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.”

Similar 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 on admitted facts principles of law have been wrongly applied. I am, therefore, 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.”

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.**

Now in view of the afore-said settled proposition, it is to be seen that whether the impugned order suffers from any infirmity, illegality, perversity or is against the settled principles governing the grant of injunction.

After bestowing due consideration to the aforesaid submissions and scrutinizing the impugned orders, this court is of the considered view that submissions made by learned counsel for the petitioner do not carry any legal and factual weight. The impugned orders passed by both the courts

below being absolutely in consonance with the principles governing the grant/decline of injunction do not call for any interference by this court.

No doubt, Chanchal Singh predecessor-in-interest of the petitioner as well as respondent was the owner of the property in question and he is alleged to have transferred the land by way of registered transfer deed. The tubewell is also in existence in the aforesaid land. Though, it has been contended by learned counsel for the petitioner that the judgment and decree dated July 23, 2012 being under challenge has no evidential value but this Court is not in agreement with the same. Similar, questions were involved in the afore-said suit which has been decreed in favour of respondent. Whereas, the counter claim preferred by the petitioner was dismissed. The mere fact that the afore-said judgment and decree dated July 23, 2012 is under challenge through a suit for declaration but it does not mean that judgment and decree dated July 23, 2012 has lost its evidentiary value, especially in the circumstances that the same points/pleas are being reagitated in the instant *lis*, which were earlier taken in the counter claim as well as in the written statement filed by the present petitioner in the previous suit. Rather this court is of the considered view that non filing of an appeal against the afore-said judgment and decree, has resulted into attaining its finality and if the petitioner was so aggrieved of the said judgment and decree whereby, the suit preferred by the respondent was decreed and the counter claim filed by petitioner was dismissed. They could have preferred appeal or revision before the competent court of jurisdiction, which the petitioner have not done. Thus, non-filing of appeal or revision is suggestive of the fact that they have accepted the same. Both the courts

below have given concurrent findings/observations while dismissing the application under Order XXXIX Rules 1 and 2 of the Code as well as an appeal preferred against the order of dismissal. Moreover, the rights of the parties have already been settled vide judgment and decree dated July 23, 2012.

Thus, this court is of the considered view that both the courts below have exercised their discretion judiciously while dealing with an application under Order XXXIX Rule 1 & 2 read with Section 151 CPC as well as an appeal and the impugned orders do not call for any interference by this Court.

In the light of what has been discussed above, this court does not find any merit in the instant petition and same is dismissed, whereby the impugned orders passed by both the courts below are upheld.

No order as to costs.

MAY 26, 2017

SHAM

**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No