

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

**CIVIL REVISION No. 3211 of 2014
DECIDED ON: APRIL 19, 2017**

SAHIB SINGH & ANOTHER

.....PETITIONERS

VERSUS

DHANVIR SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. S.S. Panag, Advocate
for the petitioners.

Mr. Om Pal Sharma, Advocate
for the respondent.

JASPAL SINGH, J

By virtue of instant petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of order dated March 05, 2014 (Annexure P-7) passed by learned Additional District Judge, Ludhiana vide which an appeal filed by respondent against the order dated September 16, 2013 passed by learned Civil Judge (Jr. Division), Ludhiana, vide which parties were directed to maintain status quo with respect to the suit property, in the application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (for short 'CPC') was set aside and further seeking restraining respondent from raising construction over the

suit property. .

Briefly stated the facts giving rise to the instant *lis* are that the property in dispute fully detailed and described in the plaint was given to the respondent temporarily after he shifted from his native village to village Mattewara for the storage of his domestic articles with the assurance given by him that he will vacate the premises in question as and when he got an alternative accommodation on rent. However, thereafter, respondent has failed to vacate the premises, which has been depicted in red colour in the site plan Annexure P-3 and started raising construction over there. On account of which petitioners were restrained to file a suit for possession as well as permanent injunction. Along with the said civil suit, application under Order XXXIX Rules 1 and 2 of the Code was also filed, while disposing of the said application, the parties were directed to maintain status quo with regard to the existing position till the disposal of the suit, vide order dated September 16, 2013. However, the said order was challenged by the respondent/defendant before lower Appellate Court by way of an appeal and that appeal was allowed vide order dated March 05, 2014. Aggrieved against the order dated March 05, 2014, petitioners/plaintiffs have approached this Court by way of instant civil revision.

Assailing the impugned order dated March 05, 2014, it has been argued with vehemence by learned counsel for the petitioners that the impugned order is absolutely against the documentary evidence available on file as well as settled proposition of law. In fact, it is the result of improper application of judicial mind by lower Appellate Court. It is

grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of material placed before the Court, the lower Appellate Court shall loath to interfere simply because on a denovo consideration of the matter it is possible for the appellate court to form a different opinion on the issue of prima-facie case, balance of convenience, irreparable injury. Unless the appellate court comes to the conclusion that the discretion exercised by the trial Court is vitiated by an error apparent or perversity and manifestation of injustice has been done. The appellate Court within its jurisdiction to exercise its powers but there is nothing to this effect in the impugned order passed by lower Appellate Court.

He further urged that in the present case lower Appellate Court has failed to appreciate the facts that there is no valid title of the disputed property in favour of the respondent, who is merely basing his claim by an alleged agreement to sell which otherwise is surrounded by suspicion circumstances. Whereas the claim of the petitioners is based upon registered sale deed. Further lower Appellate Court has also failed to appreciate the fact that mere possession of the respondent over the suit property does not deprive the petitioners of their title. The lower Appellate Court has not taken care of the fact that respondent was only temporarily allowed to store his belongings at the time he shifted from his native village to village Mattewara, where the property in dispute is situated.

Moreover, if the respondent is allowed to raise the construction over the suit property, the petitioners who are actual owner would certainly suffer an irreparable loss and it would lead to unnecessary

future complication. Moreover, a wrong observation has been made by

lower Appellate Court while passing the impugned order that the property subject matter of the sale deed in favour of petitioners does not match with the property described in the plaint. But the petitioner is only seeking injunction in respect of the property, which is the subject matter of the sale deed, which has been reflected in the site plan. Thus, there is a wrong observation by lower Appellate Court that no prima-facie case exist in favour of the petitioners. Since the impugned order is absolutely against the settled principles governing the grant of injunction, the same is liable to be set aside by way of acceptance of instant revision petition.

On the other hand learned counsel for respondent has supported the impugned order and submits that there is no infirmity, illegality or perversity in the impugned order, which is otherwise absolutely in consonance with the documents available on file and the settled proposition of law. The entire claim of the plaintiff/petitioners is a matter of record and there is nothing prima-facie evidence available on record to prima-facie establish the ownership of the petitioners/plaintiffs over the suit property. The possession of respondent over the suit property is an admitted fact. Since the exercise of discretion by lower Appellate Court in favour of the petitioners/plaintiff while directing the parties to maintain status quo with regard to existing position was an arbitrary and it has been rightly set aside by lower appellate court.

After bestowing due consideration to the submissions made by learned counsel for the parties, this Court is of the considered view that the impugned order being absolutely in consonance with the documents available on file, calls for no interference by this Court.

Undisputably, the respondent is in possession of property in

dispute since 2005 continuously can be said to be settled possession. There is no documentary evidence available on file that the possession of the suit property was handed over by the petitioners/plaintiffs to the respondent when he shifted from his native village to village Mattewara for the storage of his domestic articles. Moreover, there is also nothing on record as to why, the petitioners did not object his possession or asked him to deliver back the possession of the disputed property at any point of time. Thus, possession of respondent cannot be said to be a permissive one. Since petitioners are in settled possession over the suit property for the last more than one decade, he cannot be objected from raising construction therein, on the simple assertion raised by the petitioners that he is not owner and/or that he handed over the suit property to the respondent as a licensee.

Thus, the courts below have rightly concluded that neither the prima facie case exists in favour of the petitioners/plaintiffs nor the balance of convenience lies in their favour. They are also not likely to suffer any repairable loss incase an injunction is declined. Thus, the impugned orders do not call for any interference by this Court. Otherwise, also there is nothing wrong in the impugned order. Discretion has exercised by the courts below in a very judicious manner.

As a sequence of afore-said discussion, this Court does not find any merit in the instant revision. As such, it stand dismissed.

No order as to costs.

**JASPAL SINGH
JUDGE**

APRIL 19, 2017
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No