

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 119

Civil revision No.3240 of 2017 (O & M)

Date of Decision: May 08, 2017

Karamjit Singh Walia

..... PETITIONER

VERSUS

Satwant Ahluwalia & others

..... RESPONDENTS

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

...

PRESENT: - Mr. Rakesh Kumar, Advocate, for the petitioner.

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Jaspal Singh, J

1. By virtue of instant petition preferred under Article 227 of the Constitution of India, petitioner has sought setting aside of order dated October 19, 2015 passed by the Civil Judge (Junior Division), Kapurthala, whereby an application under Order XXXIV Rules 1 & 2 CPC has been dismissed, as well as order dated January 24, 2017 passed by the Additional District Judge, Kapurthala, vide which, an appeal preferred by the petitioner against order of trial court has been dismissed.

2. While assailing the impugned orders, it has been argued by learned counsel for the petitioner that the same are absolutely

the grant of injunction. Both the courts below have erred in dismissing the application moved by petitioner – Karamjit Singh Walia under Order XXXIX Rules 1 & 2 CPC. Both the courts below have fallen in error which has resulted into causing great prejudice and hardship to the petitioner – plaintiff while dismissing the application.

3. Learned counsel for the petitioner has further contended that the courts below have wrongly hold that petitioner failed to prove his possession, especially when he is in possession of the disputed property i.e. ancestral residential house. Respondent No.1 has wrongly disposed off/sold the property without getting complete title and without any partition, especially when he produced the register of Nagar Council, Kapurthala and produced No Due Certificate dated January 28, 2014 which have not been denied by the respondents. A perusal of the above said documents reveal that father of petitioner namely Surinderjit Singh has been recorded as co-owner alongwith others, on the basis of which he is in possession of one room of house No.B-XII-200, existing in Shastri Market, Kapurthala. Respondent No.1 has wrongly sold the property to respondent No.2 without showing the title, rather the same has been found existing in the name of three sons of Pritam Singh, thus above said sale deed dated March 24, 2014, vide Wasika No.4715, executed between respondent Nos.1 and 2 is not sustainable in the eyes of law and has no binding effect upon the petitioner. Till the month of January 2014, property was existing in the name of all co-sharers, but on March 25, 2014 respondent No.2 tried to dispossess the petitioner from the portion of

house in question by taking forcible possession alongwith some anti-social elements and tried to break the lock. Respondent No.1, in connivance with respondent No.2 procured false document(s) and executed a sale deed dated March 24, 2014 whereas she was not competent to sell the house in question as petitioner alongwith others has share in the house in dispute and is a co-sharer. Aggrieved by the aforesaid act, petitioner instituted a civil suit in application under Order XXXIX Rules 1 & 2 CPC was also preferred which has been dismissed by the trial court vide impugned order dated October 19, 2015. An appeal preferred against the aforesaid order has also been dismissed by the lower appellate court vide another impugned order dated January 24, 2017.

4. Learned counsel for the petitioner has contended that both the courts below have not taken into consideration the documents placed on record by the petitioner including register of Nagar Council, Kapurthala and No Due Certificate of disputed property which clearly show that his father alongwith other co-sharers was owner of the suit property and after his demise, petitioner is in possession of the same and he is in actual & physical possession of one room under his lock and key. Besides, his household articles are also lying in the said room. Respondent No.1 cannot sell the property as there is no document with regard to oral partition proceedings and she is not the absolute owner of the same. It is the settled law that if oral partition is not entered into the revenue record with consent of parties, same cannot be looked into. As per No Due Certificate, the property is existing in the name of three

brothers including petitioner's father and oral partition cannot be relied upon. Moreover, the petitioner has proved his title as well as valid possession over the property but the courts below have wrongly declined the injunction to the petitioner. Thus, the impugned orders are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of the instant revision petition.

5. After bestowing due consideration to the aforesaid submissions made by learned counsel for the petitioner and scrutinizing the impugned orders and the documents available on file, this Court is of the considered view that the submissions made by learned counsel for the petitioner do not carry any legal or factual weight.

6. 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.”

7. 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.”

8. 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.

9. Now, in the light of the aforesaid limited and restricted scope and jurisdiction, it is to be seen whether there is any infirmity, illegality or perversity in the impugned order(s) passed by the courts below.

10. Petitioner – plaintiff instituted a civil suit claiming that he is owner to the extent of 1/12th share in house No.B-13/200, measuring 0 Kanal – 4 Marla situated at Shastri Market, Kapurthala. He sought declaration to the effect that sale deed bearing Wasika No.4715 dated March 24, 2014 executed by defendant No.1 in favour of defendant No.2 is totally illegal, null, void, forged and fabricated and is without consideration. Thus, same being a result of fraud is not binding upon the rights of plaintiff. Plaintiff also claimed permanent injunction restraining the defendants from dispossessing the plaintiff

forcible, illegally or in any manner whatsoever from the room of house in question as well as restraining the defendants from transferring, selling, mortgaging or creating any charge over the house in dispute in any manner. Defendants filed written statement as well as reply to application under Order XXXIX Rules 1 & 2 CPC read with Section 151 CPC on the grounds that plaintiff has not come to the court with clean hands and has suppressed true facts as such he is not entitled to any relief. Infact, the suit property was owned by Pritam Singh, grandfather of plaintiff and father of defendant No.3. Pritam Singh owned another house bearing No.B-13/204 which fell to the share of Surinderjit Singh, father of plaintiff and defendant No.3. House No.200 fell to the share of Amarjit Singh and Harkamaljit Singh, sons of Pritam Singh. Defendant No.2 purchased the house in question from its owner Harkamaljit Singh and Satwant Ahluwalia, legal heirs of Amarjit Singh, vide sale deed dated March 24, 2014 for a valuable consideration of ₹ 5,10,000/-.

11. Except one No Due Certificate issued in favour of father of plaintiff alongwith other defendants, no other document has been placed on record by the plaintiff to prove his possession. Had it been so, the plaintiff would have certainly placed on record any other document to show his possession which he could not produce. Thus, the lower appellate court rightly upheld the order passed by the trial court, dismissing the application under Order XXXIX Rules 1 & 2 CPC. 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 orders 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.

12. 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 October 19, 2015 passed by the trial court as well as order dated January 24, 2017 passed by the lower appellate court are upheld.

13. 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.

14. No order as to costs.

May 08, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No