

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

**CR No.3460 of 2017**

**Date of decision: 15.05.2017**

**Ram Kumar and others**

**..Petitioners**

**Versus**

**Lajpat Rai and others**

**..Respondents**

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

**Present:** Mr. R.S. Mamli, Advocate  
for the petitioners.

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**Daya Chaudhary, J.**

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 06.04.2017 passed by learned Additional District Judge, Yamuna Nagar at Jagadhri whereby, the application moved by the petitioners has been dismissed.

Briefly, the facts of the case as made out in the present revision petition are that the respondents-plaintiffs filed a suit for permanent injunction restraining the petitioners-defendants from interfering in their possession over the property in dispute, which was decreed in their favour and petitioners-defendants were restrained from interfering in the possession over the land in dispute vide judgment dated 08.11.2016.

Against said judgment and decree passed by the trial Court, an appeal was filed by the petitioners-defendants before the Additional District Judge, Yamuna Nagar. Along with the appeal, an application under Order

41 Rule 5 CPC was filed for staying the operation of impugned judgment and decree till the final decision of the appeal. Reply to said application was filed stating therein that the Court was not having any power to entertain the application and no injunction could be granted at the instance of defendants against the plaintiffs. It was held that the appeal was continuation of original proceedings and the defendants could have claimed their right, if any, before the trial Court or in the appeal. It was also held that the applicants were not having prima facie case in their favour and the application being devoid of any merit was dismissed vide order dated 06.04.2017, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioners submits that the evidence of the petitioners was closed on 17.10.2011 and a complaint was also made by them and thereafter, the matter was inquired on three occasions i.e., on 25.09.2011, 08.08.2011 and 30.08.2011. In the inquiry, it was found that the Registrar has neither signed the sale deed nor the mutation of inheritance. It was found in the inquiry that the respondents had played fraud with the petitioners. Learned counsel further submits that a fraud had been committed by the respondents in connivance with the revenue authorities. By considering these facts, the petitioners moved an application for staying/restraining the respondents from cutting and removing the trees but said application was dismissed without considering the fact that a fraud was committed with the petitioners. At the end, learned counsel for the petitioners submits that the application moved by the petitioners deserves to be allowed.

Heard arguments of learned counsel for the petitioners and have also perused impugned order dated 06.04.2017, whereby, the application moved by the petitioners has been dismissed as well as other documents available on the file.

The Additional District Judge, Yamuna Nagar while dismissing the application has given the following finding: -

*“5. Admittedly, the appeal is continuation of original proceedings and as such whatever right the defendants could have claimed before the trial court, can be claimed by them in the appeal. Hon'ble Punjab and Haryana High Court in **Harbhajan Singh and others vs. Kartar Singh and others, 1998 (1)PLJ-200**, has held that application for restraining the plaintiff from interfering in possession is not maintainable. Therefore, the present application is not maintainable.*

*6. Contention raised by counsel for the appellants that the respondents are claiming ownership through the decree passed in their favour, is also without any merit, as the plaintiff-respondents are claiming through the sale deed executed by Mansi Devi in their favour. The plaintiff-respondents remained successful in several litigations with the applicant and therefore, the applicant are not having prima-facie case in their favour. Otherwise also, in case,*

*the appellants succeeds in their appeal, they can claim mense profits from the respondents-plaintiffs.”*

The respondents-plaintiffs claimed ownership right through the decree passed in their favour on the basis of sale deed executed by Mansi Devi in their favour. They remained successful in several litigations with the applicants-petitioners and finding no prima facie case in their favour, the application was dismissed. However, it was observed that they could have claimed mense profits from the respondents-plaintiffs. It has also been observed that the appeal was continuation of original proceedings and whatever right the defendants could have claimed before the trial Court, could be claimed by them in the appeal. By relying upon the judgment rendered by this Court in ***Harbhajan Singh's case (supra)***, it has been held that the application for restraining the plaintiffs-respondents from interfering in possession was not maintainable and as such, the application filed by the petitioners-defendants was dismissed being not maintainable.

In ***Harbhajan Singh's case (supra)***, it has been held that the interim injunction in a suit can be granted in favour of the plaintiff on an application filed by the plaintiff under Order 39 Rule 1 and there is no provision to entertain an application filed by the defendant under Order 39 Rules 1 and 2 CPC. It was also held that the trial Court was not correct in allowing the application filed by the defendant under Order 39 Rules 1 and 2 as the application itself was not maintainable under the provisions of the Civil Procedure Code.

Similarly, in ***Ram Chander vs. Harbhajan Singh, 1986 RRR 99***, it was held by this Court that the application filed by the defendant for

grant of temporary injunction restraining the plaintiff from taking forcible possession of land in dispute except in due course of law in a suit filed by the plaintiff for declaration and possession is not maintainable. Only plaintiff can move application for grant of temporary injunction. Clause (c) to Rule 1 of Order 39 of the Code added by way of amendment, makes it clear that it is only the plaintiff who could have moved such application.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioners and as such, the revision petition being devoid of any merit is dismissed.

15.05.2017  
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(DAYA CHAUDHARY)  
JUDGE

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|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether Reportable        | Yes |