

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 116

Civil Revision No.3539 of 2017 (O & M)
Date of Decision: May 16, 2017

Raj Kumar

.... PETITIONER

VERSUS

Shamsher Singh

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. A.S. Virk, Advocate, for the petitioner.

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Jaspal Singh, J

1. By virtue of the instant petition preferred under Article 227 of the Constitution of India, petitioner has sought setting aside of order dated July 22, 2016 (Annexure P-2) passed by the Civil Judge (Junior Division), Hansi, whereby an application moved under Order XXXIX Rule 1 & 2 CPC read with Section 151 CPC has been dismissed, as well as judgment dated October 10, 2016 (Annexure P-1) passed by the Additional District Judge, Hisar, vide which, an appeal preferred by the petitioner against order dated July 22, 2016 has been dismissed.

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

absolutely against the evidence available on file and settled canons for governing the grant of injunction. Both the courts below have erred in allowing the application moved by the respondent - plaintiff under Order XXXIX Rules 1 & 2 CPC, even though, he has failed to establish his actual physical possession over the disputed property. The courts below have only raised a presumption that the house seems to be abandoned being in dilapidated condition and have held *prima facie* possession of the respondent – plaintiff while restraining the petitioner – defendant from interfering in his possession as well as from raising any sort of construction over the same. Further, the courts below have relied upon the entries appearing in jamabandi for the year 2013-14 which are not relevant for disposal of the instant lis, especially in view of the fact that the land is not under cultivation, rather, it is located in the residential area. On the other hand, it stands amply proved that an exchange took place between forefathers of both the parties to the suit, way back nearly about 60-70 years ago, in pursuance of which, petitioner – defendant has been residing in the suit property for the last many years. Subsequent to the exchange, a family settlement was also arrived at between petitioner – defendant and his brothers. So, the possession of the property, on the basis of family settlement and exchange, stands proved.

3. Learned counsel for the petitioner has further contended that even as per the averments made in the plaint, respondent – plaintiff has claimed himself to be the owner to the extent of 1/3 share in the land measuring 150 kanal 8 marlas comprised in Khasra No.56//15/4(1-1), Khewat No.43, Khatoni No.46 to 48, as per jamabandi for the year 2013-14, and the other co-sharers have not been impleaded as party in this suit. In such a situation, it can be said that respondent – plaintiff has not approached

below have fallen in error which has resulted into causing of great prejudice and hardship to the petitioner – defendant while allowing the application for ad-interim injunction. Neither the *prima facie* case is made out in favour of the respondent – plaintiff nor the balance of convenience lies in his favour. He is also not going to suffer any irreparable loss as he is not in possession of the disputed property. Thus, the impugned order dated July 22, 2016 passed by the trial court, as upheld by the lower appellate court vide its judgment dated October 10, 2016 are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of the instant revision petition.

4. After bestowing due consideration to the aforesaid submissions made by learned counsel for the petitioner and scrutinizing the impugned order/judgment and the documents available on file, this Court is of the considered view that the impugned order and judgment do not suffer from any infirmity, illegality or perversity, rather the same are absolutely in consonance with the settled principles of law governing the grant of injunction.

5. 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.”

6. 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.”

7. 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.

8. Now, in the light of the aforesaid limited jurisdiction, it is to be seen whether the impugned order/judgment deserve any interference by this Court?

9. No doubt, while seeking ad-interim injunction under Order XXXIX Rules 1 & 2 CPC, the respondent – plaintiff has claimed himself to be owner in possession to the extent of 1/3rd share in the land comprised in Khasra No.56//15/4(1-1), Khewat No.43, Khatoni No.46 to 48, as per jamabandi for the year 2013-14. A glance at the jamabandi clearly reveals that the respondent – plaintiff is owner in possession of the suit property

plaintiff that land in suit fell to his share on the basis of family settlement arrived at between him and other family members nearly about 15 years ago. It was only thereafter, he has raised construction of the house thereon and he has been residing continuously for the last more than 15 years after having obtaining an electric connection. He is also enlisted as voter and is holding a ration card specifying his residence in the aforesaid house. The entries appearing in the jamabandi carry a presumption of truth under Section 44 of the Punjab Land Revenue Act, 1887, though, the said presumption is rebuttable one. In the case in hand, the petitioner – defendant has tried to rebut the presumption of those entries by alleging that an exchange took place between the forefathers of the parties to the instant lis and subsequently, a family settlement has also been arrived at, in pursuance of which, he came in possession. But, to the utter surprise, except a bald assertion in this regard, there is no other evidence. It is well settled principle of law that until and unless any oral family settlement or exchange is reported to the revenue authorities and the factum thereof, is reflected in the revenue record and mutation sanctioned, it carries no evidentiary value. In the case in hand, though the family settlement as well as exchange has been alleged by the petitioner – defendant but to the utter surprise, no such family settlement or exchange was ever brought to the notice of the revenue authorities for getting mutation sanctioned on the basis thereof. Even, there is nothing on the record to suggest with regard to delivery of possession at the time of alleged exchange. Moreover, both the courts below have given concurrent findings to the effect that the respondent – plaintiff is in possession of the property in suit and have allowed the application under Order XXXIX Rules 1 & 2 CPC restraining the petitioner – defendant from interfering in the peaceful possession of the respondent – plaintiff as well as

from raising any sort of construction during pendency of the suit. 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 order and judgment 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.

10. 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 July 22, 2016 passed by the trial court as well as judgment dated October 10, 2016 passed by the lower appellate court are upheld.

11. 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.

12. No order as to costs.

May 16, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No