

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

CR No.3565 of 2017 (O&M)
Date of decision : 21.07.2017

Jagir Singh

...Petitioner

Versus

Sarabjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Akhilesh Vyas, Advocate for the petitioner.

ANIL KSHETARPAL, J.

The plaintiff has filed the present revision petition under Article 227 of the Constitution of India challenging the order passed by the learned Additional Civil Judge (Senior Division), Baba Bakala Sahib, Amritsar dismissing the application filed by the plaintiff under Section 151 CPC for restoration of the possession on the ground that he has been dispossessed in violation of temporary injunction granted in his favour.

The brief facts are that the plaintiff filed a suit for permanent injunction seeking restraint order against the defendants from raising construction over the suit property as also restraining the defendants from interfering in the possession of the plaintiff. The suit was instituted on 30.10.2015 and temporary injunction order was passed by the Court on 05.11.2015, Obviously the order was without hearing the defendants.

The plaintiff filed an application dated 12.01.2016 (Annexure P-2) asserting that on 08.11.2015, the defendants came alongwith masons and construction materials, dispossessed the plaintiff and started raising

construction on the plot in question. It was further asserted that the plaintiff immediately informed the local police about the stay order but the police did not take any action. He further informed S.S.P. Rural but no action was taken. The plaintiff also moved an application for appointment of the Local Commissioner which was allowed and as per the report, three rooms, one store and one kitchen have been constructed and the walls are not plastered. It was also reported that the lintal is supported by two pillars. With these assertions, the plaintiff filed an application praying for restoration of the possession and demolition of the construction.

The defendants on notice filed a reply to the aforesaid application and stated that the plaintiff was never in possession. The defendants have not raised any construction after 08.11.2015.

The trial Court initially passed an order directing framing of preliminary issue. The order passed by the trial Court dated 23.02.2016 is extracted as under:-

“Heard on application u/s 151 CPC partly. Before proceedings further I deem it just to record evidence of both the parties on the application and I hereby frame a preliminary issue to the effect that whether application u/s 151 CPC deserves to be allowed? OPA. Now to come up for evidence of applicant on 01.03.2015. However it is made clear there is no need to file written statement by defendants because at first instance this application will be decided by this Court.”

Thereafter, it is the case of the plaintiff that the examination-in-chief of three witnesses was recorded on preliminary issue. The cross-examination was deferred. In the meantime, the written statement was filed

by the defendants to the plaint. Thereafter, certain adjournments were granted on request of one party or the other.

The learned trial Court passed an order on 31.01.2017, which reads as under:-

“7. Perusal of the file further shows that in this case, the plaintiff is claiming the relief of permanent injunction on the ground that he is in possession of the suit land. Whether the plaintiff is in possession of the suit land or not, is a matter of evidence. Perusal of the file further shows that the plaintiff has taken the specific stand that the defendant has violated the injunction order. Whether, the defendant has violated the injunction order, or not, is again a matter of evidence. On 1.6.2016, Sh.H.S.Sekhon, Advocate, has made report being the local commissioner and in that report, he has stated that he had inspected the spot and took photographs in the presence of the parties and some other persons. He further stated that the portion shown as ABCD was constructed as shown in the site plan by him,. In the said portion, three rooms, one store, one kitchen were constructed. The stairs was also built up and also covered one on the roof.

8. From the perusal of the report of the local commissioner, it is clear that the portion shown as ABCD in the site plan, there are three rooms, one store and one kitchen were constructed. Whether the said construction was raised during the pendency of the trial, or it was raised before filing the suit is a matter of evidence. Moreover, in the report, it is not specifically mentioned that the construction is still going on.

9. Hon'ble Supreme Court of India in case titled as Meera Chauhan versus Harsh Bishoni & Anr. 2007(1) RCR (Civil) 597, has held that “ It is also well settled that when

parties violate order of injunction or stay order or act in violation of the said order the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or to give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.”

10. Whether the defendant has violated the injunction order or not, is a matter of evidence and it can be proved only after the parties will lead their evidence. Therefore, keeping in view of the above said discussion, the application under section 151 CPC stands dismissed.”

On the same date, the learned trial Court proceeded to frame the issues involved in the suit and directed the plaintiff to start leading his evidence in the main case. The order passed by the trial Court reads as under:-

“Arguments on the application under section 151 CPC heard. Vide my separate order of even date, the application stands dismissed, as detailed therein. From the pleadings of the parties, following issues are framed:-

- 1) Whether the plaintiff is entitled to relief of Permanent Injunction as prayed for?OPP.*
- 2) Whether the suit is legally not maintainable?OPD*
- 3) Whether the plaintiff has got no locus standi to file the present suit? OPD.*
- 4) Whether the plaintiff is estopped by his own act and conduct from filing the instant suit?OPD.*
- 5) Whether the plaint is liable to be rejected under order 7 rule 11 CPC?OPD.*

6) *Whether the suit is bad for misjoinder and non-joinder of necessary parties?OPD.*

7) *Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD.*

8) *Whether the suit barred under section 11 as well as order 2 rule 2 CPC?OPD.*

9. *Relief.*

Now other issue arises of pressed by the counsel for the parties. Now to come up on 21.2.2017 for evidence of the plaintiff.”

The petitioner has challenged the order dismissing the application under Section 151 CPC seeking restoration of the possession. Counsel for the petitioner has submitted that once the trial Court had framed the preliminary issue and started recording the evidence, the trial Court could not have abandoned the aforesaid procedure adopted and proceeded to decide the suit. It has further been contended by the learned counsel that in case, a party is dispossessed in violation of injunction order, the Court has ample power under Section 151 CPC to order restoration of the possession. Therefore, it has been submitted that the order passed by the learned trial Judge is perverse.

I have heard learned counsel for the petitioner at length and with his able assistance gone through the order passed and other documents available on the file.

No doubt, the Civil Judge at one stage had framed the preliminary issue and started recording the evidence. However, thereafter, learned Civil Judge thought it proper to proceed with the trial rather than holding a limited trial within the trial of the suit.

The Civil Court certainly has power to order restoration of the possession in exercise of its inherent power in case the injunction order is violated and someone is dispossessed. However, before passing such order, the Civil Court has to be absolutely sure that the injunction order has been violated.

The ex parte injunction order is on the basis of the prima facie opinion formed by the Court on the basis of the pleadings and the documents attached. Such prima facie finding cannot be held to be conclusive to prove that the plaintiff was in possession on the date the order was passed or the plot was without any construction. In the absence of such finding, the Civil Court cannot pass an order for restoration of the possession or demolition of the construction.

Learned counsel for the petitioner has cited the judgment reported as *2007(1) RCR (Civil) 592 titled Meera Chauhan Vs. Harsh Bishnoi and others* to support the arguments that the Civil Court do have power to order the restoration of possession if in violation of the injunction order, someone has been dispossessed. The Hon'ble Supreme Court has held that Court in exercise of inherent power can put back the parties to some position as they stood prior to the issuance of the injunction order.

There is absolutely no dispute about the power of the Court to restore the parties to same position as they stood prior to the issuance of the injunction order. However, in the present case, there was only ex parte temporary injunction. The Civil Court will have to record the finding that on the date the injunction order was issued, the plaintiff was in possession and the defendants have raised the construction after in violation of the

injunction order. The learned Civil Judge had ordered that since such finding can only be recorded after recording the evidence, therefore, application has been dismissed at that stage.

In my opinion, the learned Civil Court has committed a slight error. The Court should have ordered the preliminary issue as was ordered to be framed vide order dated 23.02.2016 would also be a issue in the main suit and the Court should have proceeded with the trial of the suit itself.

In these circumstances, the order passed by the learned Additional Civil Judge (Senior Division) Baba Bakala Sahib, Amritsar is modified to the extent that the issue framed on 23.02.2016 shall also be issue No.10 in the suit. The parties would be permitted to lead evidence on the issue framed on 23.02.2016 and thereafter if ultimately after recording of the evidence while deciding the suit, the Court finds that the injunction order was violated and plaintiff was dispossessed in violation of the injunction order or any construction was raised by the defendants in violation of the injunction order, the Court would appropriately mould the relief and order the demolition of the construction and restoration of the possession.

With these observations, the present revision petition filed by the petitioner is disposed of.

21.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No