

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

129

CR No.3566 of 2017
Date of decision: 13.11.2017

Roop Chand

..... Petitioner

Versus

M/s Active Promoters Pvt. Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Amit Jain, Advocate for the petitioner.

Mr. Sanjeev Sharma, Sr. Advocate with
Mr. Shekhar Verma, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-petitioner is aggrieved of order dated 07.12.2016 passed by Civil Judge (Jr. Divn.), Gurgaon framing a preliminary issue on the question of jurisdiction of the Civil Court.

It is not in dispute that an application for partition was filed which was allowed and even instrument of partition was prepared. Petitioner filed an appeal against the order of partition which was dismissed. Revision petition filed by the plaintiff-petitioner is pending. Plaintiff-petitioner filed a suit for permanent injunction. The prayer made in the suit is extracted as under:-

“It is, therefore, prayed that decree for permanent injunction restraining defendants, their assigns, lessee, or any one claiming through them from interfering in peaceful possession of plaintiff over the suit land, changing nature of suit land, raising any sort of construction over suit land and dispossessing plaintiff from suit land in any manner till land is partitioned by metes and bound be passed against defendants in favour of plaintiff.

Any other relief which this Hon'ble Court deems fit and proper be passed in favour of plaintiff and against the defendant in the interest of justice.”

Learned trial Court while considering the application under Order 39 Rule 1 and 2 i.e. for grant of temporary injunction directed that since in view of provisions of Section 158 of the Punjab Land Revenue Act, prima facie jurisdiction of the Civil Court is barred so as to challenge the orders passed by the authority under the Punjab Land Revenue Act, 1887, therefore, preliminary issues is necessary.

Learned counsel for the petitioner has very vehemently argued that the plaintiff has not challenged the order passed by the revenue authorities and, therefore, bar of jurisdiction would not apply. In the present case, Civil Judge (Jr. Divn.) has only framed preliminary issue. Parties have been directed to lead evidence. Issue has been framed in exercise of power under Order 14 Rule 2, CPC. Order 14 Rule 2, CPC enables the Court to frame preliminary issue on the question of jurisdiction of the Court or a bar to the suit created by any law for the time being enforced. The preliminary issues are framed just to weed out the suits which are not maintainable. In the present case, plaintiff has lodged parallel proceedings. On the one hand, he has challenged the order before the revenue authorities. On the other hand, he has filed a suit for injunction.

Taking into consideration the aforesaid fact, this Court does not find any good ground to interfere with the order passed by the Court.

Revision petition is dismissed.

Needless to say that any observations made by this Court while deciding the revision petition would not effect the decision of the case on merits.

13.11.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No