

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 3787 of 2017 (O&M)

DATE OF DECISION:24.05.2017

Madan Singh (deceased) through his LRs

.....Petitioners

Versus

Roop Singh

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. SS Siao, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 5.11.2016 (Annexure P-4) passed by Additional District Judge, Ludhiana, affirming the order dated 8.10.2013 (Annexure P-3) passed by Civil Judge (Junior Division), Ludhiana.

Briefly, the facts of the case as made out in the present petition are that the respondent-plaintiff filed a civil suit for declaration to the effect that he is exclusive owner in possession of land measuring 5 marlas and also for permanent injunction restraining the defendants from interfering in his possession. Along with the suit, an application under Order 39 Rules 1 and 2 CPC was also filed, which was contested by petitioner-defendant-Madan Singh. The trial Court granted interim stay in favour of the respondent-plaintiff vide order dated 8.10.2013. Against the said order, petitioner-defendants filed an appeal before the learned Additional District Judge,

Ludhiana. Defendant-Madan Singh died. The appeal filed by the petitioner-defendants was dismissed vide order dated 5.11.2016 and the impugned order passed by the trial Court was affirmed. Orders dated 8.10.2013 and 5.11.2016 are subject matter of challenge in the present revision petition.

Learned counsel for the petitioners contends that both the Courts below have not taken into consideration the very material fact that the property in dispute was sold by Nahar Singh to Madan Singh vide agreement dated 29.12.1989 and physical possession thereof was also delivered but said Nahar Singh was not arrayed as party to the suit. Learned counsel further contends that no description of the property was depicted in the alleged sale deed of the respondent, which shows that the alleged sale deed of respondent-plaintiff was forged and fabricated document and has no value in the eyes of law. At the end, learned counsel for the petitioners contends that the petitioners are owner in possession of the property in dispute since the date of its purchase i.e. 29.12.1989 and respondent-plaintiff has no right, title and interest over the suit property in any manner.

Heard the arguments advanced by learned counsel for the petitioners and have also gone through the impugned orders passed by both the Courts below and other documents available on the file.

The facts relating to filing of suit by the respondent-plaintiff along with an application under Order 39 Rules 1 and 2 CPC, grant of interim stay, filing of an appeal against the order passed by the trial Court and dismissal of the appeal are not disputed.

While allowing the application of the respondent-plaintiff under Order 39 Rules 1 and 2 CPC, it was observed by the trial Court that the plaintiff has sought relief against defendant-Madan Singh on the ground that he is lawful owner in possession of the suit property. The respondent-

plaintiff to support his claim has also placed on record copy of the jamabandi for the year 2006-2007, sale deed dated 6.6.2008 in his favour. Petitioner-defendant-Madan Singh alleged himself to be in possession of the suit property but failed to produce anything on record to show that Nahar Singh was owner in possession of suit property. By considering the fact that prima facie case was made out in favour of the respondent-plaintiff and balance of convenience was also in his favour, the interim order was granted in favour of respondent-plaintiff as he would suffer an irreparable loss if stay was not granted.

Similarly while dismissing the appeal filed by the petitioners, it has been observed that claim of the petitioner-defendants is that the respondent-plaintiff is not the owner of the suit property as it was not owned by Kheona Singh rather it was owned by Nahar Singh, who sold the plot to the petitioner-defendants through an agreement dated 18.12.1989 and handed over the possession of the plot in dispute. However, the petitioner-defendants have failed to produce on record anything to show that Nahar Singh was the owner in possession of the plot in dispute.

As per case of the plaintiff-respondent originally Sh. Kheona Singh was owner in possession of the suit property. Kheona Singh died intestate leaving behind respondent-plaintiff and Atma Singh s/o Sadhu Singh s/o Kheona Singh, Kali Singh s/o Sadhu Singh s/o Kheona Singh, Charan Singh s/o Sadhu Singh, Babu Singh s/o Kheona Singh, Kesro d/o Kheona Singh, Debo d/o Kheona Singh, Amro d/o Kheona Singh, Sher Singh s/o Smt. Bachan Kaur d/o Kheona Singh, Mukhtiar Kaur wd/o Deva Singh s/o Kheona Singh and Buta Singh s/o Deva Singh s/o Kheona Singh as his only surviving legal heirs. The suit property was inherited by

plaintiff-respondent and aforesaid 11 persons were having equal shares. The mutation of inheritance was also entered at Sr. No. 1025 in the name of plaintiff-respondent and aforesaid other co-sharers. It is also the case of the plaintiff-respondent that he has purchased the share of other co-sharers in the suit property vide registered sale deed bearing wasika No. 315 dated 6.6.2008 and mutation of sale deed was also entered in the name of plaintiff-respondent and since the date of purchase the plaintiff-respondent is in continuous possession of said property. The demarcation of said land was also conducted at the spot by Halqa Kanungo on 7.11.2012.

In case of grant of ad interim injunction, the Courts has to address its essential to existence or otherwise of three aspects i.e. i) existence of a prima facie case ii) balance of convenience in favour of the applicant iii) irreparable loss or damage to the party in case the interim injunction is denied.

The Grant or refusal of an interim injunction in a civil suit is the most important stage in the civil trial. Due care, caution, or diligence should be taken by the judicial officers and judges while granting or refusing injunction. Once an injunction is granted, it takes time to vacate that order.

In Maria Margarida Sequeria Fernandes and others vs. Erasmo Jack de Sequeria (dead) through L.Rs. and others, 2012(2) RCR (Civil) 441, the observation of Hon'ble the Supreme Court in such like matter is as under: -

“Grant or refusal of an injunction

86. Grant or refusal of an injunction in a civil suit is the most important stage in the civil trial. Due care, caution, diligence

and attention must be bestowed by the judicial officers and judges while granting or refusing injunction. In most cases, the fate of the case is decided by grant or refusal of an injunction. Experience has shown that once an injunction is granted, getting it vacated would become a nightmare for the defendant. In order to grant or refuse injunction, the judicial officer or the judge must carefully examine the entire pleadings and documents with utmost care and seriousness.”

Similarly in **Wander Ltd. vs. Antox India (P) Ltd., 1990 Supp. SCC 727**, this view has been affirmed, which is reproduced as under: -

“In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the

trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.”

In **Skyline Education Institute (India) Pvt. Ltd. v. S.L. Vaswani (2010) 2 SCC 142**, the 3-Judge Bench considered a somewhat similar question in the context of the refusal of the trial Court and the High Court to pass an order of temporary injunction, referred to the judgments in **Wander Ltd. v. Antox India (P) Ltd (supra)**, **N.R. Dongre v. Whirlpool Corpn. (1996) 5 SCC 714** and observed:

“The ratio of the abovenoted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity.”

In view of the facts as mentioned above and findings recorded by both the Courts below, I do not find any ground to interfere in the impugned orders passed by both the Courts below. Accordingly, the present revision petition being devoid of any merit is hereby dismissed.

May 24, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes