

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-4103-2017 (O&M)

Date of decision: 06.07.2017

Gurjinder Singh and others

..... Petitioners

Versus

Pawan Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. CS Bakshi, Advocate for the petitioners.

Mr. Padamkant Dwivedi, Advocate
for caveator-respondent No. 1.

RAMENDRA JAIN, J. (ORAL)

1. Challenge in the instant revision under Article 227 of the Constitution of India read with Section 151 CPC, has been laid to the order dated 04.05.2017, passed by the learned Civil Judge (Junior Division), Amritsar, directing the petitioner-defendants to restore the possession of the house measuring 100 sq. yards comprising one room and kitchen (hereinafter referred to as 'the suit property') allegedly taken by them illegally and forcibly during the pendency of the suit, while accepting the application of respondents-plaintiff under Section 151 CPC.

2. In nutshell, respondents-plaintiff filed a suit for permanent injunction against the petitioners to restrain them from interfering into their peaceful possession and dispossessing them from the suit property. Along with the said suit, an application under Order 39 Rules 1 and 2 CPC was

also filed. The same was accepted by the learned trial Court vide order dated 05.07.2014 (Annexure P-4). Consequently, the petitioners were restrained from interfering into the peaceful possession of respondents-plaintiffs or from dispossessing them illegally from the aforesaid suit property. Thereafter, from the pleadings of the parties, issues were also framed and the case was fixed for evidence of respondents-plaintiff.

3. The respondents-plaintiff moved another application under Section 151 CPC dated 22.09.2014 (Annexure P-5) to get restored their possession over the suit property allegedly taken by the petitioners during the pendency of the suit illegally and forcibly by taking advantage of their absence by breaking the locks of the suit property. Despite contest from the petitioners, the learned trial Court accepted the same vide the order impugned herein and directed the petitioners in the manner as mentioned above in the opening part of this judgment/order.

4. Learned counsel for the petitioners contended that no application under Section 151 CPC lies claiming such type of relief, as the proper course for the respondents-plaintiff was to file an application under Order 39 Rule 2-A CPC. The learned trial Court has erred in passing the impugned order without adjudicating upon the fact as to whether respondents-plaintiffs were, in fact, in possession of the suit property.

5. On the other hand, learned counsel for respondent No. 1-caveator, vehemently, opposed the aforesaid submissions made by learned counsel for the petitioners.

6. I have given anxious consideration to the submissions made by learned counsel for the parties. For ready reference, the observations made by learned trial Court in para No. 6 of the impugned order Annexure P-4

passed by it, upon the application filed by respondents-plaintiff under Order 39 Rules 1 and 2 CPC is reproduced as under:-

“6. After hearing both counsels and perusing the file, it is clear that the original property belongs to Raj Karan, Ram Sanjeevan and Ram Saroman. It is also clear that Ram Sanjeevan and Ram Saroman have sold their share to the defendants. It is also clear that plaintiffs have agreed to sell a portion to the defendant which is clear from the copy of agreement to sell filed by the defendant. It is also clear from the agreement to sell that the possession of 1/3rd share to be sold was to be deliver at the time of its execution meaning thereby, the possession was not delivered at the time of the agreement to sell that means the plaintiffs are still in possession of the suit property prima facie. Plaintiffs have also filed copy of jamabandi from year 2010-11 showing their possession. Once it is prove that plaintiff is in possession of the suit property, they cannot be dispossessed therefrom, unless in due course of law.”

7. From the above, it is evident that the learned trial Court has restrained the petitioners from dispossessing respondents-plaintiff from the suit property by considering their possession over it. In these circumstances, this Court finds no illegality or perversity in the impugned order, directing the petitioners to restore the possession of the suit property to the respondents-plaintiff allegedly taken by them forcibly during the pendency of the trial taking advantage of the absence of respondents-

plaintiff.

8. In view of the above, there is no illegality or perversity in the impugned order. The instant revision being completely devoid of any merit is hereby dismissed.

9. It is clarified that anything observed here-in-above shall not be taken as an expression of opinion, on the merits of the controversy while deciding the main case.

July 06, 2017

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No