

HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 5123 of 2015 (O&M)

Date of decision: 09.05.2017

Kundan Singh through his LR Harminder Singh

...Petitioner

Versus

Surinder Pal Singh Sandhu and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Kartik Gupta, Advocate
for the petitioner

Ms. Neha Jain, Advocate for
Mr. K.S. Dadwal, Advocate
for respondents No. 1 and 2

RAMESHWAR SINGH MALIK , J. (Oral)

Feeling aggrieved against the order dated 12.11.2014 (Annexure P-8) passed by learned Additional District Judge, whereby the application of the plaintiff for interim injunction filed under Order 39 Rule 1 and 2 CPC was dismissed, allowing the miscellaneous appeal of the defendants, plaintiff has approached this Court by way of present revision petition filed under Articles 227 of the Constitution of India, for setting aside the impugned order dated 12.11.2014 (Annexure P-8).

Notice of motion was issued and in the meantime, parties were directed to maintain status quo with regard to the suit property.

Heard learned counsel for the parties.

Plaintiff-petitioner has filed a suit for separate possession by way of partition and also for permanent injunction restraining defendants No. 1 to 3 from raising any kind of construction over the suit property till the same is partitioned by meets and bounds. Alongwith the suit, the plaintiff also filed an application for

interim injunction under Order 39 Rules 1 and 2 CPC. The said application of the plaintiff was allowed by the learned trial Court vide order dated 04.05.2011 (Annexure P-7). It was held by the learned trial Court that plaintiff has fulfilled all the three basic ingredients for granting him the interim injunction. It was the learned first Appellate Court, who dismissed the application of the plaintiff under Order 39 Rules 1 and 2 CPC, while accepting the miscellaneous appeal filed by the defendants. In the very nature of things, it is yet to be established on record as to who was in actual and exclusive possession of any piece of land out of the disputed property.

However, it is equally true that if the interim injunction which was rightly granted by the learned trial Court is not permitted to continue in favour of the plaintiff, he will certainly suffer irreparable loss and injury. It is so said because the plaintiff has made out a case for interim injunction. As per the pleaded case of the parties, there was a good *prima facie* case in favour of the plaintiff. Balance of convenience was also in favour of the plaintiff. In the case in hand, if the interim injunction is not granted in favour of the plaintiff, he is bound to suffer irreparable loss. Once all these three basic ingredients were fulfilled at the hands of the plaintiff, he was certainly entitled for interim injunction which was rightly granted by the learned trial Court. Since the learned Additional District Judge failed to appreciate the above said factual and legal aspect of the matter while passing the impugned order dated 12.11.2014 (Annexure P-8), it has caused manifest injustice to the petitioner-plaintiff and the same can not be sustained.

During the course of hearing, learned counsel for the respondents could not raise any meaningful argument in support of the impugned order passed by the learned first appellate court and rightly so it being a matter of record. In this view of the matter, it can be safely concluded that the learned trial Court was well within its

jurisdiction while granting interim injunction in favour of the plaintiff. However,

since learned Additional District Judge has misdirected himself while passing the impugned order dismissing the application of the plaintiff under Order 39 Rules 1 and 2 CPC, the impugned order dated 12.11.2014 (Annexure P-8) passed by the learned first Appellate Court cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 12.11.2014 (Annexure P-8) passed by learned Additional District Judge is hereby set aside. Order dated 04.05.2011 passed by learned trial Court (Annexure P-7) would stand restored and shall continue during the pendency of the suit.

Resultantly, with the above-said observations made and directions issued, instant revision petition stands allowed, however, with no order as to costs.

09.05.2017
reena

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No