

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

286

CR-5758 of 2016 (O&M)

Date of Decision:30.08.2017

Sarup Singh

.....Petitioner

Versus

Birpal Kaur

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.H.R.Bhardwaj, Advocate,
for the petitioner.

Mr.Gurpreet Jayia, Advocate,
for the respondent.

RAMESHWAR SINGH MALIK, J.(Oral)

Feeling aggrieved against the order dated 04.07.2016 (Annexure P-2) passed by the learned Additional District Judge, whereby miscellaneous appeal of the defendants was allowed and the order dated 28.05.2015 passed by the learned trial court, allowing the application of the plaintiff under Order 39 Rules 1 and 2 of the Code of Civil Procedure (for short "the CPC") was set aside, plaintiff has approached this Court by way of present revision petition, filed under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued.

Heard learned counsel for the parties.

A bare combined reading of both the orders passed by the learned trial court as well as the learned first appellate court will make it crystal clear that the learned trial court vide its order dated 28.05.2015 (Annexure P-1) rightly granted *ad interim* injunction in favour of the

plaintiff because the plaintiff had fulfilled all the basic ingredients for granting *ad interim* injunction in his favour. However, since the learned Additional District Judge fell in serious error of law, while passing the impugned order particularly while making his observations in para 6 of the impugned order, a manifest injustice has been caused to the plaintiff-petitioner. Having said that, this Court feels no hesitation to conclude that the impugned order dated 04.07.2016 (Annexure P-2) passed by the learned Additional District Judge cannot be sustained.

Suit filed by the petitioner-plaintiff is at the initial stage. Both the parties are yet to produce their respective documentary as well as oral evidence. Merits of the pleaded case of the parties would be possible to be decided only after due appreciation of evidence, which is yet to be brought on record by the parties. It was premature to say that the Will as well as transfer-deed in question will not grant any right in favour of the plaintiff. It was also not warranted to comment on the merits of these documents at the hands of learned Additional District Judge, while deciding the miscellaneous appeal of the defendants, by passing the impugned order. Under these circumstances, it can be safely concluded that the learned Additional District Judge exceeded his jurisdiction, while passing the impugned order and the same cannot be sustained, for this reason also.

Learned trial court rightly considered and appreciated true facts of the case while allowing the application of the plaintiff under Order 39 Rules 1 and 2 CPC. The order passed by the learned trial court is based on correct appreciation of facts of the case as well as supported by sound reasons and the same deserves to be restored. Further, once the plaintiff-petitioner has made out a *prima facie* case and balance of convenience was

also found in his favour, denial of *ad interim* injunction would have certainly caused irreparable loss to the plaintiff. However, since the learned Additional District Judge could not appreciate the abovesaid factual as well as legal aspect of the matter while passing the impugned order, it has caused serious prejudice to the interest of the plaintiff and the impugned order cannot be sustained, for this reason as well.

During the course of hearing, learned counsel for the respondents-defendants could not raise any meaningful argument in support of impugned order dated 04.07.2016 (Annexure P-2) passed by the learned first appellate court and rightly so, it being a matter of record.

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 passed by the learned Additional District Judge has been found suffering from patent illegality and perversity, the same cannot be sustained. Accordingly, impugned order 04.07.2016 (Annexure P-2) is hereby set aside. Consequently, order dated 28.05.2015 (Annexure P-1) passed by the learned trial court is restored.

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

August 30, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No