

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.6415 of 2016

Date of Decision-09.08.2017

Rajinder Kumar
Versus

... Petitioner

Rani

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Deepak Verma, Advocate for the petitioner.

Mr. Vikas Bali, Advocate for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 23.08.2016 passed by Additional District Judge, Hoshiarpur, vide which order dated 27.01.2014 passed by Civil Judge (Junior Division), Garhshankar was reversed, thereby, dismissing the application under Order 39 Rules 1 and 2 CPC.

[2]. In the year 2007, mother of the petitioner namely Surjit Kaur filed a civil suit for permanent injunction i.e. Civil Suit No.218 of 2007 against the respondent, which was decreed vide judgment and decree dated 10.10.2008. Respondent was restrained from interfering in the house property of the mother of the petitioner. The said decision had already attained finality. Thereafter, Civil Suit No.11 of 2011 was filed by the petitioner and his mother Surjit Kaur for permanent injunction, restraining the defendants therein namely Ram Parkash and Mrs. Rani Bhatti wife of Chanan (respondent herein) from forcibly raising construction and from demolishing

construction over the suit property except in due course of law. Interim order was granted in the said suit on 18.08.2011 by the trial Court, vide which defendants were restrained from raising any construction over the suit property and also from demolishing the existing construction thereon. The said interim order was further extended after appearance of the defendants. During pendency of the aforesaid suit, the petitioner went abroad in January 2013 and gave his brick kiln to some other person for running the same. The respondent by taking undue benefit of the absence of the petitioner started interfering in the brick kiln and other properties. Faced with this situation, the plaintiff had to file another suit i.e. Civil Suit No.422 of 2013 for permanent injunction through his general power of attorney Surjit Kaur (mother of the petitioner), restraining the defendants from interfering in the peaceful possession of the petitioner over the property.

[3]. Trial Court vide order dated 27.01.2014, restrained the defendant/respondent from interfering in the running of brick kiln of the petitioner and also from interfering in possession of the petitioner over the suit property. The *prima facie* case in favour of the plaintiff/petitioner was considered with reference to copy of *jamabandi* for the year 2009-10 of village Chak Hazipur, khasra girdawari of village Chak Hazipur, khasra girdawari of village Panam, general power of attorney, copy of Form-B of The Punjab Control of Bricks Supplies, Price and Distribution Control Order 1998, copy of judgment passed in Civil Suit No.218 of 2007 titled

Surjit Kaur Vs. Rani and copy of stay order passed in Civil Suit No.422 of 2013 titled Rajinder Kumar and another Vs. Ram Parkash and another dated 18.08.2011.

[4]. The plea of the petitioner that he is the exclusive owner in possession of 19 kanals, 8 marlas in village Chak Hazipur, where brick kiln was in operation in the name and style of M/s Ram Parkash Rajinder Kumar was *prima facie* considered in his favour. The plea of the petitioner that he is owner in joint possession of land measuring 12 kanals, 18 marlas in village Panam was also *prima facie* considered in his favour. Defendant was legally wedded wife of Chanan son of Husan Lal and was totally stranger to the suit property. Defendant claimed herself to be wife of Ram Parkash and brick kiln was being managed by the defendant. Respondent claimed that the plaintiff never came into possession of the suit property. Ram Parkash was the owner of the land in question. The revenue entries in the name of the petitioner were claimed to be false and baseless.

[5]. Trial Court after considering all the three golden principles for granting temporary injunction, granted interim stay on the basis of *prima facie* case in favour of the plaintiff. Balance of convenience was also found to be in favour of the plaintiff. Defendant was restrained from causing any interference/obstruction in the running of the brick kiln in the land measuring 19 kanals 8 marlas situated in village Chak Hazipur and from interfering in the

possession of the plaintiff in land measuring 12 kanals 18 marlas situated in village Panam till final decision of the suit vide order dated 27.01.2014. Lower Appellate Court reversed the aforesaid order vide order dated 23.08.2016.

[6]. I have considered the submissions made at the bar.

[7]. Learned counsel for the petitioner submitted that as per revenue record viz. *jamabandi* for the year 2009-10 of village Chak Hazipur and *jamabandi* for the year 2008-09 of village Panam, petitioner and his mother are in actual cultivating possession of the suit property. The name of the respondent did not figure anywhere. After service of summon in the present suit, the respondent contested the suit and thereafter, filed Civil Suit No.274 of 2013 for declaration, declaring herself to be owner in possession of the house within the suit property of village Panam and also filed an application under Order 7 Rule 11 CPC for dismissal of Civil Suit No.422 of 2013 filed by the petitioner. Civil Judge (Junior Division), Garhshankar vide order dated 02.01.2014 dismissed the application filed by the respondent.

[8]. Learned counsel further submitted that as per revenue record and other *prima facie* material on record viz. copy of Form-B of The Punjab Control of Bricks Supplies, Price and Distribution Control Order 1998, copy of judgment passed in Civil Suit No.218 of 2007 titled Surjit Kaur Vs. Rani, rejection of application under Order 7 Rule 11 CPC filed by the respondent and dismissal of the suit filed

by the respondent titled Rani Vs. Ram Parkash etc in default on 02.09.2015, a prima facie case is made out in favour of the petitioner for grant of temporary injunction.

[9]. It appears that there is a serious dispute between the parties with regard to matrimonial status of the respondent. Respondent claimed herself to be second wife of Ram Parkash (father of the plaintiff/petitioner), whereas petitioner has asserted that she was wife of Chanan son of Husan Lal, resident of village Chak Phullu, Tehsil Garhshankar, District Hoshiarpur.

[10]. At this stage, without commenting upon ultimate merits of the case, *prima facie* material viz. copy of *jamabandi* for the year 2009-10 of village Chak Hazipur, khasra girdawari of village Chak Hazipur, khasra girdawari of village Panam, general power of attorney, copy of Form-B of The Punjab Control of Bricks Supplies, Price and Distribution Control Order 1998, copy of judgment passed in Civil Suit No.218 of 2007 titled Surjit Kaur Vs. Rani and copy of stay order dated 18.08.2011 passed in Civil Suit No.422 of 2013 titled Rajinder Kumar and another Vs. Ram Parkash and another, can be considered for grant of *ad interim* injunction in favour of the plaintiff/petitioner. Even if, another suit titled Rajinder Kumar Vs. Ram Parkash was ordered to be dismissed as withdrawn on 16.05.2015 that itself is not sufficient to preclude the petitioner from seeking interim injunction during pendency of the present suit.

[12]. In view of above, this revision petition is allowed. Application under Order 39 Rules 1 and 2 CPC is accepted and the order dated 27.01.2014 passed by the trial Court is restored during pendency of the suit.

09.08.2017
Prince

Yes/No

Yes/No