

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.77 of 2016

Date of Decision: 08.12.2017

Balbir Singh

.....Petitioner

Vs.

Harbhagwan Dass @ Bhagwan Dass and others.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- None for the petitioner.

Mr.S.S.Siao, Advocate, for respondent No.1.

RITU BAHRI, J. (ORAL)

The petitioner has come up in revision against the order dated 20.04.2015 whereby, learned Addl. District Judge, had set aside the order dated 23.01.2015 (Annexure P-6) passed by learned Civil Judge (Jr.Divn.) Sunam.

The brief facts of the case are that plaintiff/Harbhagwan Singh @ Bhagwan Dass had filed a suit for permanent injunction claiming himself to be the owner in possession of the suit property. Respondents were threatening to dispossess the plaintiff from the suit property illegally and forcibly. Upon notice respondents filed written reply in which it was averred that plaintiff was neither owner nor in possession of the suit property. As per judgment of the Hon'ble Supreme Court in the case of **A.C.Muthiah Vs. BCCI 2011 (2) ACJ 0553**, whereby, main suit was not maintainable as the respondent had taken a plea that applicant was neither in possession of the suit land and the title of the plaintiff was under a cloud of in dispute and he would have to file a suit for declaration, possession and injunction. This

application for interim injunction was dismissed.

On appeal, the learned appellate Court had set aside the order passed by the trial Court on the ground that defendants in their written statement had denied the ownership of the plaintiff. However, there was no document placed on record to prove this fact that they were owners of the suit property. The question with regard to ownership of the property was to be decided later on by the learned trial Court on the basis of evidence which was yet to be adduced on the file. The learned appellate Court thereafter, proceeded to examine the possession of the plaintiff over the suit land, the plaintiff had placed on record the photocopy of licence No.894 issued by Punjab state Mandi Board, Chandigarh which was in favour of plaintiff Bhagwan Dass, photocopy of the VAT certificate, photocopy of certificate of registration and electricity bills. Coupled with these documents, plaintiff also placed on record the photographs which showed their possession over the property in dispute. The defendant Balbir Singh son of Bhagwan Singh moved an application on 02.09.2014 to DSP, Dirba whereby, he had stated that he was having one shop at Purchase Centre, Kamalpur and he had purchased the same from Bhagwan Singh, Narain Singh sons of Raghbir Chand. It was further submitted in this application that he had given this shop to Harbhagwan Dass alias Bhagwan Dass, but now he was not vacating the same. By this application, the defendant had himself admitted the possession of the plaintiff over the suit property on 02.09.2014. During the pendency of the case as per the case of the plaintiffs, defendants tried to get the shop vacated forcibly and illegally due to which FIR No.148 dated 30.10.2014 was registered against the defendants under Sections

The question whether the defendants were having better title than that of the plaintiffs would be considered by the trial Court during the trial of the case. Once the possession of the plaintiffs over the land in question was established, the balance of convenience would automatically go in their favour and they would suffer an irreparable loss and injury if the injunction was not granted in their favour. Learned appellate Court had set aside the order of the trial Court and application was allowed and defendants were restraining from dispossessing the plaintiffs from the property in dispute forcibly and illegally except in due course of law.

A perusal of the order of the learned appellate Court shows that in order to prove their possession, the plaintiffs had placed on file photocopy of licence No.894 issued by Punjab State Mandi Board, Chandigarh, which was in favour of plaintiff Harbhagwan Dass, photocopy of the VAT certificate, photocopy of certificate of registration and electricity bills. The defendant had admitted the possession of the plaintiff over the suit property on 02.09.2014. During the pendency of the case as per the case of the plaintiffs, defendants tried to get the shop vacated forcibly and illegally, due to which FIR No.148 dated 30.10.2014 was registered against the defendants under Sections 447/511/379 IPC. Learned counsel for the plaintiffs had relied upon the judgment of the Supreme Court in the case of Ram Gowda (dead) by LRs Vs. Varadappa Naidu (Dead) by Lrs. 2004(1) RCR (Civil) 519 whereby, it was held that a person in peaceful possession was entitled to retain his possession and in order to protect such possession, he might even use reasonable force to keep out a trespasser. A rightful owner, who had been wrongly dispossessed of land, may retake possession of he could do so peacefully and without the use of unreasonable force. If the trespasser was

in settled possession of the property belonging to the rightful owner shall have to take recourse to law, he could not take the law in his own hand and evict the trespasser or interfere with his possession.

So in the light of the discussion, the order passed by learned Additional District Judge, Sangrur, does not reflect any material irregularity or perversity which warranting interference. Hence the present revision stands dismissed.

(RITU BAHRI)
JUDGE

08.12.2017
anil

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No