

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

C.R. No.8120 of 2016 (O&M)

Date of Decision : 25.10.2017

Ram Parkash

.... Petitioner

VERSUS

Krishan and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. S.K.Verma, Advocate,
for the applicant-petitioner.

B.S.WALIA, JUDGE (ORAL)

C.M. 22213-CII of 2017

Application for placing legible certified copy of judgment dated 17.10.2016 – Annexure P-6 on record in terms of order of this Court dated 15.02.2017 is allowed. Annexure P-6 is taken on record.

C.R. No.8120 of 2016

[1] Heard, learned counsel for the petitioner.

[2]. Learned counsel contends that the Courts below failed to take into account that the petitioner's father could not sell the petitioners share in the ancestral property to respondent-defendant No.2, consequently, the petitioner was entitled to the injunction prayed for.

[3]. A perusal of order dated 19.01.2016, passed by the learned Civil Judge (Jr. Div.), Ellenabad, reveals that the learned Civil Judge took into account that defendant No.2/respondent No.2 had become owner of the suit land as sale deed had been registered in his name pursuant to court orders in execution of the Civil Court Decree and that mutation had

also been entered in his name. In the circumstances, the learned Civil Judge concluded that a *prima facie* case and balance of convenience was in favour of defendant No.2/respondent No.2 and if the interim order was not vacated, defendant No.2/respondent No.2 would suffer irreparable loss. Accordingly, interim order dated 25.05.2015 granted in favour of the petitioner was vacated in exercise of the powers under Order XXXIX Rule 4 of the CPC.

[4]. Aggrieved by order dated 19.1.2016 passed by the learned Civil Judge (Jr. Division) Ellenabad, the petitioner filed an appeal. The learned Appellate Court by taking into account that defendant No.2/respondent No.2 had filed Civil Suit No.907-C of 2004 titled as 'Sahib Ram versus Krishan' for possession by way of specific performance of agreement to sell dated 30.6.2000 executed by defendant No.1/respondent No.1 in favour of defendant No.2/respondent No.2 and of the said suit having been decreed vide judgment and decree dated 10.11.2008 and in execution of said judgment and decree, sale deed dated 20.3.2015 registered by the Executing Court through a Local Commissioner in favour of defendant No.2/respondent No.2, and further on the basis of the sale deed, mutation No.2946 sanctioned and entered in favour of defendant No.2/respondent No.2, besides the Tehsildar having been directed to put defendant No.2/respondent No.2 in symbolic possession of the property, held that the same revealed that defendant No.2/respondent No.2 had become the owner of the suit land after a protracted legal battle and that after defendant No.2/respondent No.2 had been declared absolute owner of the land in question, suit had been filed by the petitioner in collusion with his father

i.e. defendant No.1/respondent No.1 with a view to delay the partition proceedings to be initiated by defendant No.2/respondent No.2 to separate his tuck from the other co-sharers.

[5] In the aforementioned background, the learned Appellate Court held that there was merit in the contention of defendant No.2/respondent No.2 of the suit being a collusive suit since defendant No.1/respondent No.1 in the written statement in the suit filed by the petitioner had denied agreement to sell dated 30.6.2000 whereas judgment and decree dated 10.11.2008 had been passed in the suit filed by defendant No.2/respondent No.2 against defendant No.1/respondent No.1 and the only plea put forward by the petitioner in the suit filed by him was of the judgment/decree dated 10.11.2008 and the sale deed pursuant thereto being illegal.

[6] The learned Additional District Judge, Sirsa concluded that the learned Civil Judge (Jr. Division), Ellenabad had rightly concluded that no prima facie was made out in favour of the petitioner, nor was balance of convenience in his favour nor would any irreparable loss be caused to him if stay was not granted in his favour, on the contrary, a prima facie case was made out in favour of defendant No.2/respondent No.2, balance of convenience was also in his favour and irreparable loss would be caused to him if despite the judgment and decree in his favour having been executed, ad interim injunction was granted in favour of the petitioner. In the aforementioned background, the learned Appellate Court affirmed the order passed by the learned Civil Judge and dismissed the appeal.

[7] I have considered the submissions made by learned counsel for the petitioner and am of the view that the impugned order dated

17.10.2016 passed by the learned Additional District Judge, Sirsa, affirming the order passed by the learned Civil Judge Jr. Division Ellenabad dated 19.1.2016, is a reasoned order passed in accordance with the law, therefore, not warranting interference.

[8] Admittedly, Civil Suit No. 907-C of 2004 titled as 'Sahib Ram versus Krishan' was filed for possession by way of specific performance of agreement to sell dated 30.6.2000 as was executed by defendant No.1/respondent No.1 in favour of defendant No.2/respondent No.2. The said suit was decreed in favour of defendant No.2/respondent No.2 vide judgment and decree dated 10.11.2008. In execution proceedings, sale deed was got registered by the Executing Court in favour of defendant No.2/respondent No.2 through a Local Commissioner and on the basis of the same, mutation No.2946 was entered and sanctioned in favour of defendant No.2/respondent No.2 and the Tehsildar directed to put defendant No.2/respondent No.2 in symbolic possession of the suit property. Thus, defendant No.2/respondent No.2 became owner of the suit property in terms of judgment and decree dated 10.11.2008 after a protracted legal battle. It is apparent that the suit filed by the petitioner thereafter on 25.5.2015, was a collusive suit to delay the right of defendant No.2/respondent No.2 to institute partition proceedings to separate his tuck from the other co-sharers since defendant No.1/respondent No.1 in his written statement denied agreement to sell dated 30.6.2000 which had been executed by him in favour of defendant No.2/respondent No.2 despite the fact that Civil Suit No.907-C of 2004 titled as 'Sahib Ram versus Krishan' for possession by way of specific performance of agreement

to sell dated 30.6.2000 executed by defendant No.1/respondent No.1 had been decreed vide judgment and decree dated 10.11.2008 in favour of defendant No.2/respondent No.2 and the appeal filed by defendant No.1/respondent No.1 had also been dismissed. Besides, as admitted by the learned counsel for the petitioner, no further proceedings were initiated by defendant No.1/respondent No.1. Moreover, in execution proceedings, sale deed also stands registered in favour of defendant No.2/respondent No.2 on 20.3.2015 by the Local Commissioner appointed for the said purpose by the Executing Court and pursuant thereto, mutation No.2946 has also been entered and sanctioned in favour of defendant No.2/respondent No.2. Moreover, the Tehsildar has put defendant No.2/respondent No.2 in symbolic possession of the suit property. In the circumstances, the question of grant of ex parte ad interim injunction for restraining interference in the alleged ownership of the plaintiff-petitioner over the land in question does not arise.

[9]. In the circumstances, no prima facie case is made out in favour of the petitioner nor can the balance of convenience be said to be in his favour nor can it be said that the petitioner would suffer irreparable loss in case the ex parte interim injunction prayed for is not granted. It is settled law that ad interim injunction can be granted only if the parameters in respect thereto are fulfilled. Reference in this connection is made to the decision of the Hon'ble Supreme Court in **Shanti Kumar Panda versus Shakuntala Devi 2004(1) SCC 438**. Relevant extract of the aforementioned decision is reproduced hereunder:

“At the stage of passing an interlocutory order such as on an application for the grant of

ad interim injunction under Rule 1 or 2 of Order 39 of the Civil Procedure Code, the competent Court shall have to form its opinion on the availability of a prima facie case, the balance of convenience and the irreparable injury- the three pillars on which rests the foundation of any order of injunction.”

[10] In the instant case, the parameters for grant of ad interim injunction not having been fulfilled, I find no merit in the revision petition. Accordingly the same is dismissed. Order dated 17.10.2016 passed by the learned Additional District Judge, Sirsa upholding order dated 19.1.2016 passed by the learned Civil Judge(Jr. Division) Ellenabad, is affirmed. However, nothing said in this order shall be taken as an expression on the merits of the case.

[11] At this stage, learned counsel for the petitioner prays for permission to move an appropriate application before the learned Civil Judge (Jr. Division), Ellenabad to secure protection of the interest of the petitioner. Needless to mention, it is always open to a party to take recourse to remedy as may be available to it in accordance with law.

[12]. Accordingly, finding no merit in the revision petition, the same is dismissed in limine.

(B.S.WALIA)
JUDGE

October 25, 2017

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Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No