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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1583-2018 (O&M)

Date of decision : 06.04.2018

Rajender

... Petitioner(s)

Versus

Vishaka Industries Ltd.

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.C. Kinra, Advocate
for the petitioner.

Mr. Sanjay Kaushal, Senior Advocate with
Mr. Vivek Khatri, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

CM-6324-CII-2018

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the documents (Annexures P-7, P-7/1, P-8, P-8/1 and P-9) are taken on record, subject to all just exceptions.

CR-1583-2018

The petitioner-plaintiff is aggrieved of the impugned order dated 05.02.2018 (Annexure P-5), passed by the Additional District Judge, Jhajjar, whereby the civil miscellaneous appeal bearing No. 1 of 2018 titled as “Visaka Industries Ltd. Vs. Rajender” preferred against the order dated 22.12.2017, passed by the Civil Judge (Senior Division), Jhajjar, has been

allowed, reversing the order of the trial Court, vide which, injunction application at the instance of the defendant has been allowed and the plaintiff has been restrained from interfering in the peaceful possession of the defendants/counter-claimant.

Mr. N.C. Kinra, learned counsel appearing on behalf of the petitioner-plaintiff submitted that Rajender/petitioner-plaintiff instituted the suit for permanent injunction restraining the defendant/Vishaka Industries Limited, its agents and servants from changing the nature of the suit property by way of construction over the suit property and also the property mentioned in paragraph 2 to 5 as well as restraining them from interfering in the peaceful possession of Killa No.12 till the land is not partitioned. In para 3 of the plaint, it was categorically pleaded that the the defendant purchased 1/10th share of the land bearing Rect. No.106 Killa No.17(8-0), 18(8-0), 19(8-0), 22(8-0), 23(8-0), 24(8-0), Rect. No.115 Killa No.1/2(2-4), 2(8-0), 3(8-0), 8(8-0), 9(8-0), 10(8-0), 11(8-0), 12(8-0), 13(8-0), 18/2(7-4), 19(7-19), Kitte 17 total land 129 kanals 7 marlas, from the plaintiff vide sale deed dated 28.07.2017.

In response to the aforementioned suit, the respondent–defendant not only contested the suit on merit, but also filed a counter claim. Both the parties had filed in support of their claim and counter-claim, *ad interim* application seeking restraint order against each other. The trial Court vide order dated 22.12.2017 allowed the injunction application of the defendant, whereby the plaintiff was restrained from not to interfere in the exclusive possession of the defendant/counter-claimant and the defendant would also not change the nature of the suit property bearing Khasra No.12, besides other khasra number under their possession without seeking

partition. The appeal preferred thereto at the instance of the respondent-defendant before the lower Appellate Court has been allowed vide impugned order. Hence the present revision petition.

In support of the averments made in the revision petition, he has laid emphasis on the pendency of the partition application (Annexures P-6 to P-8) filed along with CM No.6324-CII-2018 to contend that the parties to the *lis* are the same and therefore, until and unless the property is not partitioned, the question of exclusive possession cannot be determined, much less, that of construction as there is a likelihood the other party increase the cost of land by raising construction and it may be prejudiced their interest. Even otherwise, no co-sharer can be permitted to change the nature of the land detrimental to the interest of the other co-sharer.

Per contra Mr. Kaushal, learned Senior Counsel assisted by Sh. Vivek Khatri, learned counsel appearing on behalf of the respondent-defendant/counter-claimant submitted that the sale deed dated 28.07.2017 specifically mentioned with regard to the handing over the possession, even khasra number reflected in the jamabandi are not the subject matter of the partition application (Annexures P-6 to P-8). In this regard, he has drawn the attention of this Court to all the aforementioned partition applications by referring to the killa number mentioned therein.

He also referred to the photographs (Annexure A-3) annexed with the application bearing No.5650-CII-2018 for vacating the *ex parte* stay order dated 09.03.2018 (Annexure A-1), wherein, already a construction for setting up an industry is undergoing and majority of the construction has already taken place.

It was next contended that it is the counter-claimant/defendant,

who is in exclusive possession and therefore, the injunction could not have been granted. The construction is of an area, which is already fallen to the share of the plaintiff, with exclusive possession and not subject matter of the partition, even the other co-sharer have not objected to. The land is not a piece of land, but 129 kanals, thus, urges this Court for dismissal of the present revision petition.

Mr. Kinra, in rebuttal, submitted that it is not one sale deed, but many other sale deeds, of which the khasra numbers are the same.

I have heard learned counsel for the parties and appraised the paper book.

The prayer sought in the aforementioned suit reads as under :-

“It is, therefore, prayed to the Hon’ble Court that the suit of the plaintiff may please be decreed with cost in favour of plaintiff and against the defendant by restraining the defendant their servants/agents from changing the nature of suit land by way of construction over the suit property mentioned in para No.2 to 5 of the plaint and also restrained from interfering in the peaceful possession of the plaintiff from the killa No.12 till the land not partitioned by the court of law in the interest of justice.”

From the bare perusal of the aforementioned prayer, it is evident that the petitioner-plaintiff had sought an injunction with regard to Killa No.12, but the question which revolves for adjudication is whether Rectangle No. 115 Killa No.12 is subject matter of the partition application or not. On going through the aforementioned partition application, it is not so. For the purpose of clarification, the agricultural land mentioned in Annexure P-6 to P-8, reads thus:-

“Annexure P-6

1. That the agricultural land comprised of Khewat No. 73min, Khatoni No. 82, Rect. No. 13, Killa No. 8 (8-0) total measuring 8K 0M situated in Mauja Jhaswa, Tehsil Matanhail, District Jhajjar. The copy of the jamabandi for the year 2015-16 and mutations Nos. 2293, 2295, 2300 and list of co-sharer as well as shajra are attached.

Annexure P-7

1. That the agricultural land comprised of Khewat No.73 min, Khatoni No. 82 min, Rect. No.1, Killa No.25/1(0-1), 25/3(3-2); 2//21/1/1/1(2-10), 6//23(4-9); 24(0-19); 8//(8-0); 10(8-0); 11(8-0); 12(8-0); 21/1(6-0); 9//5(6-14); 6(8-4); 15(9-18); 16(8-0); 17(3-12); 24(5-8); 25(8-0); 13//4(7-17); 7(8-0); 9(7-8), 115//20(8-0), total measuring 138K 2M situated in Mauja Jhaswa, Tehsil Matanhail, District Jhajjar. The copy of the majabandi for the year 2015-16 and mutations Nos. 2281, 2292, 2293, 2294, 2295, 2296, 2300, 2301 and list of co-sharer as well as shajra are attached.

Annexure P-8

1. That the agricultural land comprised of Khewat No. 73min, Khatoni No. 82, Rect. No. 13, Killa No. 8 (8-0) total measuring 8K 0M situated in Mauja Jhaswa, Tehsil Matanhail, District Jhajjar. The copy of the jamabandi for the year 2015-16 and mutations Nos. 2293, 2295, 2300 and list of co-sharer as well as shajra are attached.”

On juxtaposition of the aforementioned particulars, it is evident that the Killa No.12 is not subject matter of the partition application. The law with regard to granting injunction against co-sharer, who is in exclusive possession, is not longer *res integra*. The aforementioned view of mine is derived from the *ratio decidendi* culled out in the judgments rendered by the Full Bench of this Court in **“Bhartu V/s Ram Sarup” 1981 PLJ 204** and reiterated by the Division Bench of this Court in **“Bachan Singh V/s**

Swaran Singh” 2000 (3) RCR (Civil) 70 and.

Once the defendant/counter-claimant has been found in exclusive possession, the aforementioned Killa No.12, against which, the injunction had been sought, is not a subject matter of the partition proceedings. The Court below has in my view not committed any fallacy, but the trial Court abdicated in restraining the defendant from raising the construction. It is a case of a gross illegality, much less, perversity. In my view, the case of the plaintiff had not fallen within the provisions/parameters of Order 39 Rules 1 & 2 entitling him to seek *ad interim* injunction, during the pendency of the suit.

Keeping in view the aforementioned facts and circumstances of the case, I do not find any illegality and perversity in the impugned order, under challenge, much less, no ground is made out for interference, accordingly, the present revision petition is dismissed.

06.04.2018

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**