

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.2496 of 2018(O&M)

Date of Decision: 23.04.2018

Kiran Pal & others

....Petitioner (s)

Versus

M/s Serial Buildtech Pvt. Ltd. & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Sandeep Sharma, Advocate
for the petitioner(s).

Mr. Sanjeev Sharma, Sr. Advocate with
Mr. Shekhar Verma, Advocate
for respondent no.5/caveator.

HARI PAL VERMA, J.

Petitioner-plaintiffs have filed the present revision petition under Article 227 of the Constitution of India, impugning the order dated 07.11.2017 (Annexure P-2) passed by learned Civil Judge (Sr. Divn.), Gurugram and order dated 06.01.2018 passed by learned Additional District Judge, Gurugram(Annexure P-3), whereby the application filed by the petitioners under Order 39 Rules 1 and 2 read with Section 151 CPC was dismissed by the trial Court vide order dated 07.11.2017 and appeal against the said order was also dismissed by the lower Appellate Court vide order dated 06.01.2018.

Briefly stated, the petitioner-plaintiffs (hereinafter referred to as “the plaintiffs”) have filed a suit for permanent injunction, restraining the respondent-defendants (hereinafter referred to as “the defendants”) from raising construction over the suit land or any part thereof or changing the nature of the suit property in any manner till they get the suit property partitioned by metes and bounds. The plaintiffs also filed an application under Order 39 Rules 1 and 2 read with Section 151 CPC to restrain the defendants from raising construction over the suit land or changing its nature till the land in question is partitioned.

As per the plaintiffs, the land is joint and has not been partitioned so far. The plaintiffs being co-sharers have interest in the entire land, but the defendants are threatening to raise construction over the said land. They have even collected building material on the spot. The plaintiffs requested the defendants not to raise construction, but they are adamant to raise construction, which necessitated the plaintiffs to file the present suit along with application under Order 39 Rules 1 and 2 read with Section 151 CPC.

The defendants have filed their written statement, whereby they have raised question with regard to maintainability of the suit, as the plaintiffs have remedy to seek partition and a suit for permanent injunction simplicitor is not maintainable. The parties have mutually partitioned the suit land amongst the co-owners and they are in possession of their respective shares. Therefore, plaintiffs have no right to interfere in the suit property, which is in possession of defendants.

Learned counsel for the petitioner-plaintiffs has argued that the plaintiffs are joint owners of the suit land and the suit land has not been partitioned and therefore, being co-sharers, have interest in the entire land. However, the defendants are threatening to raise construction over the suit land. They have even collected building material at the spot. Despite the requests made by the plaintiffs, the defendants have refused to do so. Therefore, injunction has been sought to restrain the defendants from raising any construction over the suit land or any part thereof, as it would otherwise change the very nature of the suit land. Since the defendants have taken licences/CLU on the part of the plaintiffs' land without their consent, interim order is required to be passed to restrain them from raising construction over the suit land.

On the other hand, learned senior counsel appearing on behalf of the defendant-respondents has supported the impugned orders passed by the Courts below.

I have heard learned counsel for the parties.

The precise case of the plaintiffs is for grant of a decree of permanent injunction and for grant temporary injunction to the extent that the defendants be restrained from raising construction over the suit land or changing the nature of the suit land till the land in question is partitioned by metes and bounds. The relief is based on the fact that the parties are co-sharers in the land in dispute. In the entire plaint, the plaintiffs have not given any detail as to how defendants have become the co-sharers, whether they have purchased the undivided share or any specific portion of the land. The plaint is silent about it. However, in the written statement, the

defendants have made reference to various sale deeds to show that certain portion of land in question has been purchased by them and they have been delivered physical possession by the respective vendors. These averments have not been denied by the plaintiffs by way of any replication. The sale deeds so executed in favour of the defendants by the respective vendors are not subject matter of challenge in the suit. The defendants are claiming to be in possession of the portion of land purchased by them and they have also obtained necessary licences and permission to raise construction over the said land. Therefore, in case interim injunction is granted against the defendants, restraining them from raising construction over the land in dispute, they will suffer adversely. In absence of any averment/details, as to which portion of land they are in actual physical possession, which portion has been purchased by the defendants or any part thereof is in possession of the plaintiffs. The plaintiffs have failed to fulfill the basic parameters required for grant of temporary injunction, as provided under Order 39 Rules 1 and 2 CPC, which includes establishing a prima case in favour of the plaintiffs, balance of convenience, irreparable loss or injury etc. However, in case the plaintiffs succeed in the suit, they can be adequately compensated in accordance with law.

Therefore, this Court finds that there is no illegality in the orders passed by the Courts below.

Accordingly, the present revision petition is dismissed.

April 23, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No