

117/211
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3732-2012 (O&M)
Date of decision : 16.2.2018

Rajiv Gosain

..... Petitioner

Versus

M/s Intergest India International Ltd and anr. Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Lokesh Sinhal, Advocate for the petitioner.

Mr. Padam Kant Dwivedi, Advocate for respondent No. 1.

Mr. Harsh Bunker, Advocate for respondent No. 2.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

CM-3159-CII-2018

Present application has been filed to place on record documents Annexures R-1/4 to R-1/15 along with exemption to file the same.

This is a revision against the order passed in an application filed under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908. Documents which are not on the file of the trial Court, same cannot be allowed to be produced at this stage.

Dismissed.

CR-3732-2012

Impugned in the present revision petition is the order dated 17.4.2012 (Annexure P-2), passed by learned Additional District Judge, Gurgaon and the order dated 15.6.2011 (Annexure P-1) passed by learned Civil Judge (Junior Division), Gurgaon, vide which an application filed by

the petitioner under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 was dismissed.

The brief facts of the case which are required to be noticed for the purpose of present revision petition are that one Apartment No. 420-B, Hamilton Court was allotted by defendant No. 2-M/s DLF Ltd to defendant No. 1-M/s Intergest India International Limited on certain terms and conditions which included the payment of the sale price in installments. According to the petitioner-plaintiff, defendant No. 1 with the consent of defendant No. 2, entered into an agreement to sell with the plaintiff on 2.11.2007 and the possession was handed over to plaintiff-Rajiv Gosain. It is stated that the agreement was entered into with the complete knowledge and with the consent of defendant No. 2.

Defendant No. 1 in the written statement has not disputed the assertion of the plaintiff, whereas defendant No. 2 in the written statement has denied the possession of the plaintiff. It is stated that the apartment in dispute belong to defendant No. 2. The rights of plaintiff over the apartment in dispute were denied.

Learned trial Court after hearing learned counsel for the parties came to the conclusion that agreement in question was not registered and therefore, cannot be looked into and consequently declined the injunction.

It is alleged that in the meanwhile after dismissal of the application under Order XXXIX Rule 1 and 2, read with Section 151 of the Code of Civil Procedure, 1908, by learned Civil Judge, (Junior Division), Gurgaon on 15.6.2011, plaintiff was dispossessed from the apartment in dispute on 16.6.2011 by defendant No. 2.

After the dismissal of the application, petitioner-plaintiff instituted an appeal on 16.7.2011 before the learned Additional District Judge, Gurgaon seeking restoration of the possession of the apartment in dispute.

Learned Additional District Judge, Gurgaon while discussing the prima facie evidence observed that defendant No. 2 has handed over the possession of the apartment No. 420-B, Hamilton Court to defendant No. 1 and defendant No. 1 to the plaintiff. Bills of telephone connection; mobile connection; gas connection and electricity connection and the photographs also shows the actual and physical possession of the petitioner-plaintiff. However, it was observed that since the plaintiff has been dispossessed, therefore, no injunction can be granted as the plaintiff is no more in possession of the apartment in dispute.

I have heard learned counsel for the parties and perused the case file.

Admittedly, apartment No. 420-B, Hamilton Court was allotted by defendant No. 2-M/s DLF Ltd. to defendant No. 1-M/s Intergest India International Ltd. A license deed dated 4.10.2000 (Annexure P-10) was also executed between defendant No. 2-M/s DLF Ltd and defendant No. 1-M/s Intergest India International Ltd. As per the conditions mentioned in the licence deed the possession was delivered to the licensee i.e. defendant No. 1 and the sale price is to be paid and after the sale deed is executed and registered, the legal possession will be handed over to the licensee/owner in terms of the said agreement. The monthly license fee was also stipulated.

There is a dispute regarding averment that on the request of defendant No.1,

the said allotment of apartment in question was canceled. However, the plaintiff has referred to the previous litigation, wherein defendant No. 2-DLF Ltd. has denied such cancellation.

Learned counsel for defendant No. 2 has also referred to the compromise arrived at before the High Court of Delhi in the proceedings initiated under Section 138 of the Negotiable Instruments Act 1881 in which in *clause (d)*, defendant No. 1 agreed to renounce all its claims towards apartment No. 420-B Hamilton Court.

On the other hand, learned counsel for the plaintiff-petitioner has referred to various documents i.e. Annexures P-12 to Annexure P-17 which show that as per the invoice dated 24.1.2011 a telephone bill was issued in favour of plaintiff on his address i.e. apartment No. 420-B, Hamilton Court. Similar is the position in other documents regarding mobile bills, insurance premium etc. To prove that plaintiff was forcibly dispossessed on 16.6.2011, the plaintiff has also produced the copy of the letter (Annexure P-7) dated 29.6.2011 passed by the Condominium Manager of Hamilton Court to the plaintiff in which it is stated that respondent No. 2-M/s DLF Ltd. has approached the Estate Officer, Hamilton Court on 17.6.2011 along with a copy of the order passed by learned Civil Judge (Junior Division) dated 15.6.2011 regarding apartment No. 420-B, Hamilton Court, Gurgaon and therefore, they were allowed to enter in apartment No. 420-B, Hamilton Court, Gurgaon.

This Court is not required to comment upon the merits of the documents produced by both the parties as it will influence the decision of the main case on merits by the trial Court. This Court is only to see a *prima facie* case.

After going through the documents, this Court is of the view that as on the date of the filing of the suit and dismissal of stay application, plaintiff was in possession of apartment No. 420, Hamilton Court, and that in fact after the dismissal of the application on 15.6.2011, the people from respondent No. 2-DLF entered the said apartment in dispute and took possession of the same.

This Court is also of the view that learned trial Court dismissed the application merely on the ground that agreement is not registered. Even if an agreement is required to be registered, it can always be looked into for collateral purposes i.e., to determine the nature of the possession. Therefore, learned trial Court erred in declining the application on the said ground. The lower Appellate Court also erred in declining the application on the ground that though the possession of the plaintiff was there but now since, he has been dispossessed and not in possession, therefore, the possession cannot be restored.

I am of the view that Civil Court has got enough powers under Section 151 of the Code of Civil Procedure, 1908 to undo the illegalities done by the opposite party during the pendency of the proceedings.

Consequently, impugned order 17.4.2012 (Annexure P-2), passed by learned Additional District Judge, Gurgaon and the order dated 15.6.2011 (Annexure P-1) passed by learned Civil Judge (Junior Division), Gurgaon are hereby set aside. Defendant No. 2- M/s DLF Ltd is directed to hand over the possession of the apartment No. 420-B, Hamilton Court, Gurgaon to the plaintiff forthwith and if it is not handed over within two weeks from the date of the present order, plaintiff with the help of the local police can break open the locks and enter in the said apartment and take

possession of the same, without any further orders from any Court regarding police help. Plaintiff can seek police help by producing the copy of this order before the concerned SHO and the SHO shall comply with the same. Thereafter, during the pendency of the suit, defendants shall be restrained from interfering in the possession of the plaintiff except in due course of law.

Learned counsel for defendant No. 2- M/s DLF Ltd states that plot has since been sold to third person and third party rights have been created, I am of the view that any sale during the pendency of the proceedings will not affect the right of the plaintiff and the sale to third party shall be hit by the *Rule of lis pendens*. Said third party will also be bound by the decision of this case.

It is further directed that the observations made above are strictly for the purpose of disposal of the application filed under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 and shall not be construed as the comments on the merits of the case.

In view of the above, petition stands allowed.

(KULDIP SINGH)
JUDGE

16.2.2018
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Whether speaking / reasoned
Whether Reportable:

Yes
No