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

**Civil Revision No.4171 of 2018
Date of Decision: 05.07.2018**

Nishan Singh

.....Petitioner

Vs

Satish Kumar

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Pankaj Middha, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 31.05.2018 passed by the Civil Judge (Jr. Divn.) Panipat, whereby application for restoration of possession and staying the construction being raised by the defendant over part of suit property was dismissed.

[2]. Brief facts are that in a suit for permanent injunction filed by the plaintiff/petitioner interim injunction was granted by the trial Court vide order dated 17.05.2016 and the defendant was restrained from interfering in the possession of plaintiff over the suit property comprised in *Khasra* Nos.4383/1, 4384/1, 5162/2 and 5164 total land measuring 4 *Bighas* and 5 *Biswas*

during pendency of the suit except in due course of law.

[3]. The order dated 17.05.2016 was modified in appeal at the instance of the respondent by the lower Appellate Court vide judgment dated 03.09.2016 to the extent that the order would not operate in respect of *Khasra* Nos.5165, 5166 and 5167 owned and possessed by the defendant.

[4]. The aforesaid order was assailed in Civil Revision No.6465 of 2016, which was got dismissed as withdrawn on 27.09.2016 with liberty to avail any other remedy in accordance with law.

[5]. Petitioner alleged that on 13.04.2018, defendant forcibly occupied some portion of the suit property in connivance with the police. Similar attempt had already been made on 07.04.2018 in the absence of the plaintiff/petitioner which led to filing of false FIR against the daughter of petitioner, when she came forward to resist the intended attempt of the defendant.

[6]. Learned counsel for the petitioner submitted that the defendant/respondent is carrying out construction in the land owned and possessed by the plaintiff/petitioner.

[7]. Learned counsel by relying upon **Sushil Kumar Dey Biswas and another vs. Anil Kumar Dey Biswas, 2015(1)**

R.C.R. (Rent) 41; Salim Khan vs. Krishan Kumar, 2015(25)
R.C.R. (Criminal) 775; Meena Chauhan vs. Harsh Bishnoi &
Anr., 2007(1) R.C.R. (Civil) 597 and Kalia and others vs.
Gram Sabha Manas, 1973 PLJ 296 contended that inherent powers of the Court in terms of Section 151/144 CPC can be invoked for restoration of possession, if order of injunction is violated and the plaintiff is forcibly dispossessed. Appropriate orders can be passed for restoration of possession and even police help can be provided for restoration of possession. Inherent powers must be exercised in exceptional cases for which no procedure is prescribed in the Court. Violation of order has to be proved on record and it has to be proved that the plaintiff has been forcibly dispossessed.

[8]. I have heard the submissions made by learned counsel for the petitioner.

[9]. Apparently, two sets of *khasra* numbers are the subject matter for consideration. The suit was filed in respect of *Khasra* Nos.4383/1, 4384/1, 5162/2 and 5164 owned and possessed by the plaintiff/petitioner. Interim stay was granted in respect of the aforesaid *khasra* numbers owned and possessed by the petitioner. The second set of *Khasra* Nos.5165, 5166 and 5167 are owned and possessed by the defendant/respondent. A modification was done in the interim order dated 17.05.2016 by

the lower Appellate thereby holding that the interim order shall not operate in respect of the aforesaid khasra numbers owned and possessed by the defendant.

[10]. The alleged encroachment by the defendant has been denied, rather, he submitted that he was raising construction over the part of the land owned and possessed by him. Khasra No.4383/1 and 4384/1 were situated at far of distance from Khasra Nos.5162/2 and 5164. Aks Shajra with reference to the report of Tehsildar would be the subject matter of final adjudication by the trial Court after appreciating the evidentiary value of the documents in question. Both the parties would lead relevant evidence before the trial Court and thereafter the trial Court would decide the controversy by assessing the material on record.

[11]. By way of application, petitioner seeks restoration of possession and stay of construction being raised by the defendant/respondent. For ordering restoration of possession, there has to be some material on record establishing the fact that the plaintiff has been dispossessed during pendency of the suit.

[12]. In the instant case, the interim order dated 17.05.2016 passed by the trial Court has been diluted by the lower

Appellate Court vide order dated 03.09.2016 with a specific observation that the same shall not operate qua the Khasra Nos.5165, 5166 and 5167 which are owned and possessed by the defendant. As per case of the defendant himself, he is in possession of the aforesaid khasra numbers and is raising construction thereon. Defendant has denied the factum of alleged construction being raised by him on Khasra Nos.4383/1, 4384/1, 5162/2 and 5164 owned and possessed by the plaintiff. The factum of alleged construction and interference by the respondent has to be established with reference to plausible evidence on record.

[13]. There cannot be any dispute regarding the propositions as held in the aforesaid cited precedents, but factum of dispossession of the plaintiff has to be proved during pendency of the suit. The interim order granted by the trial Court has already been modified by the lower Appellate Court and it was held that the interim order shall not operate qua the land owned and possessed by the defendant. The stand of defendant is that he is not raising any construction over the land under ownership and possession of the plaintiff, rather he is raising construction on his own land bearing *Khasra* Nos.5165, 5166 and 5167.

[14]. The leading of evidence by the plaintiff at this stage in the context of demarcation report, statement of Mohinder Singh

Patwari and report of Tehsildar dated 22.05.2018 would be tested by the trial Court in the context of alleged dispossession by the defendant. Both the parties would be at liberty to lead evidence in order to ascertain factum of alleged dispossession of the plaintiff by the defendant during pendency of the suit. No firm finding can be recorded at this stage in respect of alleged dispossession of plaintiff by the defendant and raising of construction by him over the suit property owned and possessed by the plaintiff/petitioner.

[15]. In view above, the findings recorded by the trial Court cannot be faulted with on any of the grounds taken and argued by learned counsel for the petitioner. Resultantly, this revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

July 05, 2018

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No