

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

CR No.6009 of 2016

Majhail Singh and Ors.

....Petitioners

Versus

Manjit Singh

....Respondent

Date of Order: 24.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kunal Mulwani, Advocate for the petitioners.

Mr. Prateek Pandit, Advocate for the respondent.

AMIT RAWAL, J (ORAL)

Present revision is directed against the impugned order dated 06.8.2016 passed by learned Civil Judge (Jr. Division), Garhshankar whereby the application moved by the respondent-plaintiff under Order 39 Rule 2-A CPC has been allowed.

Respondent-plaintiff filed a suit for permanent injunction alleging that they are co-owners in exclusive possession of the land measuring 59 kanals 4 marlas (hereinafter to be called as "suit land"). During the pendency of the suit, respondent-plaintiff moved an application under Order 39 Rules 1 & 2 CPC, which was allowed by the trial Court on 28.4.2014 while restraining the defendants-petitioners from interfering into the possession of the respondent-plaintiff over the suit property till the final disposal of the suit. Appeal filed against the same met with the same fate vide order dated 01.12.2015. Thereafter, the plaintiff-respondent moved application under Order 39 Rule 2-A CPC alleging that the petitioners had cut and removed about 300 popular trees and thus sought for police help, which has been allowed vide the impugned order.

Learned counsel for the petitioners submitted that the impugned

order passed by the trial is wholly illegal and perverse. The respondent-plaintiff was not in possession of the suit land and that there was no violation/breach of the interim order. The trial Court has allowed the application of the respondent-plaintiff without waiting for the report of the SHO, which had been called for a particular date, therefore the impugned order is erroneous and sketchy. He submitted that the trial Court ought to have got an inquiry conducted by giving opportunities to both the parties but no such effort has been made.

Learned counsel for the respondent submitted that the revision petition is pre mature as the Court had only allowed the application for permitting the respondent to cultivate the land with the police help as the report of the SHO was still awaited. He, therefore, urged for dismissal of the present petition.

After hearing learned counsel for the parties and appraising the paper book, I find force and merit in the submissions made by learned counsel for the petitioner. Granting of interim order in favour of the respondent-plaintiff and dismissal of the appeal are not in dispute. The only point to be seen is whether the application (P.5) could have been allowed in such manner and mode as has been done vide the impugned order. For the sake brevity, the relevant part of the impugned order reads as under:

*“I have heard both the learned counsel for the parties and perused the record on the case file an application seeking police help to implement the order of the court dated 28.04.2014. Fortified by the judgment passed in case **Amar Singh Versus Daropadi Devi and others 2001(2) PLJ page 121**, in which it has been held that any order can be passed under inherent powers of the Court.*

Possession of plaintiff established by court has to be presumed that prima facie plaintiff in possession of property on the date of institution of suit. Interference by defendant cannot be tolerated. Solemn duty of Court to protect possession of plaintiff and to that extent even provisions of Section 151 can be invoked. So keeping in view the law laid down in the present case, the application filed by the applicant is allowed as the plaintiff is owner of the property in dispute which is fully proved from the documents on record. Now report of SHO be called for 22.08.2016. Separate notice to SHO concerned Police Station be issued for date fixed with direction to submit his report on or before 22.08.2016.”

Since the trial Court had sought the report of the SHO concerned for the purpose of proper adjudication of the application, the whole purpose of awaiting report tantamounts to putting the cart before the horse. There is no reference to any evidence alleging violation of any interim order as an opportunity was required to be granted to both the parties to prove the allegations and cross allegations with regard to such breach much less report of the SHO was also to be pondered upon.

In view of above, present petition is allowed and the impugned order dated 06.8.2016 is set aside. The trial Court is directed to decide the application afresh as expeditiously as possible after taking into account the report of the SHO concerned, in accordance with law.

April 24, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No