

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

CR No.6324 of 2016(O&M)
Date of Decision: 14.11.2018

Madan Gopal

... Petitioner

Vs

Suninder Kumar and another

Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.K. Aggarwal, Advocate
for the petitioner.

Mr. Chander Shekhar, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Petitioner has challenged the order dated 31.08.2016 passed by the Additional District Judge, Kurukshetra in appeal filed by the plaintiff/respondent against the judgment and decree dated 26.02.2015 passed by the trial Court.

[2]. At the time of issuance of notice of motion on 23.09.2016, following order was passed:-

*“Learned counsel for the petitioner contends that civil suit No.279 of 2011 titled as **Surinder Kumar vs. Madan Gopal and another** for permanent injunction was dismissed by the Additional Civil Judge (Sr. Divn.) Pehowa vide judgment and decree dated 26.02.2015. Findings were recorded that plaintiff was not in possession of the suit property. The*

plaintiff/respondent filed appeal before the lower Appellate Court in which the following order was passed on 27.03.2015:-

“Present: Mr. Neeraj Gautam, Advocate for appellant.

Civil appeal received by assignment. Since there are arguable points in the appeal, same is admitted for hearing. It be checked and registered. Notice to the respondents be issued for 09.09.2015 on filing of copies/summons form etc. Lower Court record be also requisitioned for date fixed. Meanwhile operation of the impugned judgment and decree dated 26.02.2015 shall remain stayed till further orders.”

On the basis of aforesaid order of stay, the plaintiff after having lost the suit before the trial Court started construction over the suit property against which an application was moved by the petitioner before the lower Appellate Court for modification of the order dated 27.03.2015. The said application has been dismissed by the lower Appellate Court on the premise that the apprehension shown by the petitioner would give rise to a presumption that the plaintiff is in possession of the suit property.

Learned counsel further contends that the aforesaid observation is wholly erroneous. The relief of injunction had already been declined by the trial Court in a suit for permanent injunction and the restraint sought was before the lower Appellate Court qua construction, that has nothing to do with the possessory title of the parties.

Notice of motion for 07.11.2016.

In the meanwhile, status quo re: construction over the suit property be maintained by the parties.”

[3]. Learned counsel for the petitioner submitted that at the

time of dismissal of the suit by the trial Court vide judgment and decree dated 26.02.2015, following observations were made in the concluding para of the judgment:-

“-----The plaintiff neither proved the sale deed No.135 dated 04.05.1992 nor proved the Will dated 05.12.2001 nor any other document in support of title or possession, whereas the defendant Madan Gopal proved his title vide sale deed No.895/1 dated 09.07.1997 Ex.D1 and also proved title of his vendor J.L. Verma vide Ex.D8 Civil Court decree dated 03.06.1993. Necessarily, therefore, prima facie it has to be held that the defendant Madan Gopal has made out possession qua the suit land following title. It is also well settled that where title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily, the plaintiff will have to file a suit for declaration, possession and injunction. Therefore, the present suit for simplicitor injunction is not maintainable as well. In the said scenario, issue No.1 is decided against the plaintiff and issue No.2 is decided in favour of defendants.”

[4]. Plaintiff/respondent filed first appeal before the Lower Appellate Court and got stay of operation of the judgment and decree passed by the trial Court. Under the garb of interim stay granted by the Lower Appellate Court, plaintiff/respondent started construction of the site which necessitated in filing an application by the defendant/petitioner for modification of the order dated 27.03.2015 vide which interim stay was granted by the Lower Appellate Court.

[5]. Lower Appellate Court dismissed the application vide the

impugned order dated 31.08.2016 by making the following observations:-

“3. After hearing learned counsel for the applicant and the appellant-plaintiff and after going through the case file, it is observed that the present appeal is pending before the Court for adjudication and vide order dated 27.03.2015 the predecessor of this Court had ordered the operation of the impugned judgment and decree to be stayed till further orders. Gurdial Singh has been allowed to be substituted in place of respondent-defendant No.1 Madan Gopal, who is one of the applicant. They have showed apprehension that the appellant-plaintiff would raise construction over the suit property, meaning thereby the possession is with the appellant-plaintiff and by seeking the modification of the order, they want to take possession, which cannot be permitted. Hence, the application for modification or order dated 27.03.2015 is rejected.”

[6]. Perusal of the aforesaid order would show that the Lower Appellate Court has made some non-existent observations with regard to possession of the suit property by ignoring the findings recorded by the trial Court. However, no such observation ought to have been made, particularly when the appeal against the judgment and decree dated 26.02.2015 is pending consideration before the Lower Appellate Court and the stay of operation of the judgment and decree of the trial Court has been granted.

[7]. At this stage, this Court refrains itself from making any observation on factual aspect of the litigation, lest it may prejudice the case of any one. It would be just and expedient to direct both the

parties to maintain status quo in respect of alienation and possession during pendency of the appeal before the Lower Appellate Court. Lower Appellate Court would make every endeavour to dispose of the pending appeal at the earliest in accordance with law.

[8]. Disposed of.

14.11.2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No