

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

C.R. No.601 of 2018
Date of Decision.30.01.2018

Amar Singh

.....Petitioner

Vs

Manjit Singh and others

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Randhawa, Advocate
for the petitioner.

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AMIT RAWAL J.(ORAL)

The petitioner plaintiff is in revision petition against the orders (Annexures P-1 and P-2) passed in application moved under Order 39 Rule 1 and 2 CPC in the suit seeking permanent injunction restraining the defendants, their agents, attorneys, servants, employees, associates etc. from interfering or causing any interference in the peaceful possession of the plaintiff over land measuring 34 kanals 13 marlas comprised in Khewat No.40/40, Khatauni No.60 Khasra No.34//8/2, 34//9/2, 34//10/1, 34//1, 34//2, 34//3 and further restraining the defendants from digging the bore or raising any sort of construction in the above said portion of the property as shown red in the site plan and comprised in Khasra No.34//8/2 or changing the nature thereof.

Mr. Randhawa submitted that the suit was based on the partition proceedings already effected by writing dated 15.11.2000, which was recorded in the revenue record and mutation to that effect was also effected. As per the aforementioned proceedings, the land in dispute including the tubewell in case stopped working would fall to the share of the petitioner-plaintiff. When the tubewell stopped working, necessity arose for the petitioner to make a request but the same was refused. Therefore, an application under Order 39 Rule 1 and

2 CPC was moved and the trial Court on the basis of documentary evidence, prima facie, granted status quo order qua possession of the property as detailed in the head note of the plaint as well as with regard to use of the tubewell was passed. In appeal preferred against the aforementioned order, the lower Appellate Court while issuing notice on 08.11.2017, considering the fact that in view of the status quo order and photographs showing digging is continuing, restrained the respondents-defendants from digging the tubewell over khasra No.34//8/2 but while deciding the appeal did not notice the interim order and upheld the order of the trial Court. In case, the said act of the respondents is allowed to be perpetuated, though at their peril, would certainly affect the right of the party already accrued as per the writing.

I have heard learned counsel for the petitioner and appraised the paper book. The operative part of the order dated 3.10.2017 passed by the trial Court and the orders dated 8.11.2017 and 08.01.2018, passed by the lower Appellate Court are reproduced as under:-

“Order dated 3.10.2017

“.....In order to save the property in dispute from being wasted, alienated and in order to avoid of multiplicity of proceedings, both the parties are hereby directed to maintain status quo, qua possession over the property detailed in head note of the plaint, till final decision of the present case.....Accordingly, in order to prevent multiplicity of litigation and preserve the property from being wasted/alienated, this court is hereby directs both the parties to maintain status quo, qua the use of said tubewell, till final decision of the present case.

Order dated 08.11.2017

....Learned Lower Court has directed the parties to maintain status quo regarding use of the tubewell. However, the contention of the applicant is that respondents were given the right to use the motor till it will remain working condition and now it has stopped working. In support of this contention, the appellant/applicant has placed on file photographs showing that the digging is continuing over the property. Under such circumstances, when appellant/applicant is shown to be owner in possession of the property and balance of convenience lies in his favour, he will suffer an irreparable loss if the respondents succeed in digging the tubewell over his property. Under such circumstances, the respondents are strained from digging the tubewell over Khasra No.34//8/2 illegally & forcibly till next date of hearing. Compliance U/o 39 Rule 3 CPC be also made. Appellant/applicant is to take summons of the respondents dasti and to get the service effected upon them, failing which the order shall stand vacated automatically.....

Order dated 08.01.2018

....In the above given circumstances, the fact whether the electric motor and room in dispute falls in khasra No.34//8/2 or whether same bears separate & distinct khasra No.34//8/4, can be decided only when the parties led their evidence during the trial. Under these circumstances, when there is dispute regarding the existence and the working of tubewell, the order passed by learned trial Court

regarding status quo use of the tubewell cannot be said to be illegal.

11. In the light of these facts and circumstances, I do not find any defect or illegality in the order under challenge nor it is perverse in any way, hence does not call for any interference from this Court. Resultantly, the appeal in hand is devoid of any merit and same is hereby dismissed.

However, any observations made by this Court will not sway learned lower Court while deciding the petition on merits....”

On reading of the aforementioned observations, I am of the view that if at all, there was a violation of the order of the status quo by the respondents as has been noticed in the interim order dated 08.11.2017 while admitting the appeal and issuing notice, the remedy for the appellant-plaintiff was to seek implementation of the status quo order by moving appropriate application against the defendants. It has been argued that in this regard, an FIR bearing No.112 dated 02.08.2016 under Section 379 IPC and 21 of Mining and Minerals Act was also registered, though the same has been said to be result of some misrepresentation.

In view of the aforementioned observations, I do not find any illegality and perversity in the order passed by the Courts. While upholding the same, the revision petition stands disposed of in above terms.

(AMIT RAWAL)
JUDGE

January 30, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No