

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 8772 of 2017(O&M)
Date of decision: 26.09.2018

Meera Devi

.. Petitioner

vs.

Pawan Kumar and ors.

.. Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. Ashok Singla, Advocate
for the petitioner.

Mr. Gaurav Sharma, Advocate
for respondent No.1.

Harinder Singh Sidhu, J.

The present civil revision petition is directed against the orders of both the Courts below whereby an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure filed by the petitioner for staying her dispossession from the suit property/residential house during the pendency of her suit for declaration, has been dismissed.

Respondent No.1 had filed a suit for specific performance against respondent No.2 based on an agreement to sell dated 13.06.2001 on 16.07.2003. During the pendency of the said suit, respondent No.2 sold the suit land to respondent No.3 vide sale deed dated 24.07.2003. Consequently, respondent No.3 was also impleaded as defendant in the said suit. Respondent No.3 thereafter sold the suit property to the petitioner herein vide sale deed dated 18.05.2006. However, the present petitioner was not impleaded as defendant in the said suit. The suit was decreed vide judgment and decree dated 14.12.2010. The respondents No.2 and 3, who are the defendants in the said suit chose not to challenge the judgment and decree dated 14.12.2010 in appeal and it has consequently become final.

On the basis of the judgment and decree dated 14.12.2010, respondent No.1

herein initiated execution proceedings wherein warrants of possession had been issued in respect of the said property. As soon as the petitioner came to know about the issuance of warrants of possession, she filed an application under Order 39 Rules 1 and 2 CPC for staying her dispossession during the pendency of her suit which was dismissed.

The primary contention of learned counsel for the petitioner is that the judgment and decree dated 14.12.2010 is the result of collusion between the respondents inter-se. He states that respondent No.3 in his written statement had clearly disclosed that he had sold the suit property to the petitioner and despite that the plaintiff in that suit did not chose to implead the petitioner as defendant. He further states that before purchasing the suit property, the petitioner had applied for loan wherein the bank made due inquiries and no incumbrance in respect of the suit property was noticed by the bank and only thereafter loan was sanctioned in her favour. After sanctioning of the loan, the petitioner has raised construction thereon and she is living therein since 2007. It is stated that the petitioner is a bonafide purchaser and if during the pendency of suit, she is dispossessed, she would suffer irreparable loss. He further states that the property is situated at Handiaya Road, District Barnala, which is a small town. The respondents have neither objected in the construction made by the petitioner over the suit property nor raised any objection with regard to her residing therein for the last more than 10 years. This is wholly inexplicable. It cannot be assumed that respondent no.1 who was pursuing the suit for specific performance would not know that the property was actually sold to the petitioner and construction thereon was raised by her

and had started residing there.

On the other hand, learned counsel for the respondent contended that the petitioner being purchaser of the property pendente lite is bound by the decree and that the application for interim injunction has been rightly declined by the Courts below.

Considering the totality of the facts and circumstances of the case, this Court is of the view that the impugned orders deserve to be set aside and the petitioner would be entitled to interim protection during the pendency of her suit by staying her dispossession from the property in dispute. Ordered accordingly.

Learned counsel for the parties are agreed that in the facts and circumstances of the case, a direction may be issued to the trial Court to decide the suit within the time frame. In view thereof, learned trial Court is requested to decide the case expeditiously, preferably within a period of nine months from the date of receipt of a copy of this order. The parties also assured that they would endeavour to have the case disposed of within the stipulated time and would not seek any unnecessary adjournments.

Disposed of accordingly.

26.09.2018
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(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned
Whether Reportable:

Yes
Yes/No