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

**CM No.8413-CII of 2019 in/and
Civil Revision No.3012 of 2018 (O&M)
Date of Decision: 24.05.2019**

GURPREET SINGH CHHINA

.....Petitioner

Vs

HARMEET KAUR @ HARBHAJAN KAUR & OTHERS

....Respondents

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

Present:Mr. K.S. Rana, Advocate
for the applicant-petitioner.

Mr. Divanshu Jain, Advocate
for respondent No.1.

Mr. R.K. Aggarwal, Advocate
for respondents No.2 and 3.

RAJ MOHAN SINGH, J.

CM No.8413-CII of 2019

For the reasons mentioned in the application, the same is allowed. Accompanying document Annexure R-1 is taken on record, subject to all just exceptions.

Civil Revision No.3012 of 2018 (O&M)

[1]. Petitioner has preferred this revision petition against the order dated 05.04.2018 passed by the Addl. District Judge,

Chandigarh vide which the appeal filed under Order 43 Rule 1 CPC against the order of the trial Court dated 03.07.2017 was allowed.

[2]. Perusal of the record would show that respondent No.1 along with her daughter filed a suit for permanent injunction against the petitioner restraining the present petitioner from creating any encumbrance over plot No.C-37 Focal Point, Channalon, Police Station Kurali Distt. Mohali by creating general power of attorney, agreement to sell, affidavit or any other documents amounting to transferring of the symbolic and physical possession of the premises in favour of any other person except the plaintiff. The said suit was dismissed in default vide order dated 07.01.2011.

[3]. Thereafter respondent No.1 filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against the petitioner in the Court of Chief Judicial Magistrate, Roopnagar. Petitioner appeared in the said proceedings and made a statement on 11.03.2016 that he does not want to sell the property in question during pendency of the case.

[4]. Thereafter, a Civil Suit No.1259 of 2016 was filed by respondent No.1 against the petitioner, Punjab Small Industries & Export Corporation and General Public. In the said suit, the

application was filed under Order 7 Rule 10 read with Section 21 CPC by defendants No.3/petitioner for return of the plaint. The application was allowed vide order dated 03.07.2017 by the Civil Judge (Jr. Divn.) Chandigarh. An appeal was preferred against the aforesaid judgment before the Addl. District Judge and the same has been allowed vide the impugned order dated 05.04.2018.

[5]. Learned counsel for the petitioner submitted that in view of litigations on record, the Court at Chandigarh has no jurisdiction. The trial Court has rightly allowed the application under Order 7 Rule 10 CPC and returned the plaint to the plaintiff.

[6]. On the other hand, learned counsel for respondent No.1 submitted that in the present suit besides the prayer for permanent injunction, additional prayer for mandatory injunction has been made directing defendants No.1 and 2 not to transfer the ownership of plot No.C-37, Focal Point, Channalon Distt. Mohali in favour of any other person by way of sale, mortgage or in any other manner during pendency of the suit. For mandatory injunction, value for the purposes of jurisdiction has been assessed as Rs.140/-. Requisite court fee was affixed. Decree for mandatory injunction was also sought in the prayer clause 'B' of the suit.

[7]. Learned counsel further submitted that in the application filed by the petitioner under Order 7 Rule 10 read with Section 21 CPC, the petitioner has not adverted to the relief of mandatory clause prayed by the respondents in the suit and only projected a case of permanent injunction by concealing the true picture of the suit. In the reply to the application under Order 7 Rule 10 CPC filed by the petitioner, specific pleadings were made in para No.2 on merits to the following effect:-

“2. That contents of para No.1 of the application are wrong hence denied specifically. The defendant No.3 has failed to properly appreciate the relief sought by the plaintiff in the present civil suit. Apart from seeking the relief of permanent injunction against defendant No.3, the plaintiff is also seeking relief of mandatory injunction against defendant No.1 and 2 who work for gain within the territorial jurisdiction of this Hon'ble Court and as per the provisions of CPC, every civil suit is maintainable in whose jurisdiction all or any of the defendants reside or work for gain and the case of the plaintiff is squarely covered under the said provision of the CPC. The objection putforth by the defendant No.3 in this para is not sustainable under the CPC.

[8]. Learned counsel further submitted that there was no issue qua jurisdiction raised before the Courts below. Respondent No.1 and her daughter also filed a similar suit against the petitioner, Punjab Small Industries and Export

Corporation Ltd. and its Estate Officer, Raminder Singh Johar and one Anil Jeet Singh for declaration. The said suit was filed in Chandigarh. The suit was decreed on 07.03.2017 and no issue of jurisdiction was raised by the present petitioner in the said suit. The appeal filed by the petitioner against the judgment and decree dated 07.03.2017 is pending before the lower Appellate Court.

[9]. Even Anil Jeet Singh has also filed a suit for declaration and mandatory injunction against Punjab Small Industries and Export Corporation Ltd. and one Raminder Singh Johar. The said suit was also filed in Chandigarh. Anil Jeet Singh is subsequent proposed vendee from the petitioner. The said suit has also been decreed vide judgment and decree dated 31.07.2015.

[10]. In the present suit, the issues have been framed. During course of arguments, it came to be noticed that issue of jurisdiction has not been claimed by the petitioner. Issue of jurisdiction can be treated as preliminary issue as the suit can be disposed of on the basis of decision of that issue itself.

[11]. In view of above, I find no justification to interfere in this revision petition, the same is accordingly dismissed. However the petitioner can be left with liberty to seek framing of preliminary issue in accordance with law. In the event of filing

such an application, the trial Court shall decide the same in accordance with law without being influenced by any statement of fact recorded hereinabove.

May 24, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No