

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4466 of 2018

Date of Decision: 25.01.2019

Sardara Singh

.....Petitioner

Vs.

Jagmail Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Rajbir Singh Mundra, Advocate,
for the petitioner.

Mr. Kanwaljeet Singh Derabassi, Advocate,
for respondents no. 1 to 4.

Mr. V.K. Chaudhary, Advocate,
for respondent no. 5.

Mr. P.S. Bajwa, Addl. A.G., Punjab.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner (one of the plaintiffs who instituted the civil suit before the trial court), seeks the setting aside of the impugned order dated 25.05.2018, passed by the learned trial court (Civil Judge (Junior Division), Dera Bassi), whereby interim injunction has been declined, on an application filed under Order 39 Rules 1 and 2 of the CPC by them.

Today, Mr. V.K. Chaudhary, Advocate, has appeared on behalf of respondent no. 5, i.e. the Gram Panchayat of village Handesra, Tehsil Dera Bassi, District SAS Nagar, but seeks time to address arguments.

However, in the meanwhile, pursuant to the order dated 01.08.2018,

Mr. Bajwa, learned Addl. A.G., Punjab, has filed in Court today a reply of

respondent no. 6, i.e. the Block Development and Panchayat Officer, Dera Bassi, District SAS Nagar, stating therein that as per the demarcation carried out, the suit land is in the ownership of Gram Panchayat village Handesra, Tehsil Dera Bassi, District SAS Nagar, to be used by the villagers for the common purposes of the village.

It has further been stated in the affidavit that on receipt of a report of demarcation of '*Khasra*' no. 377 in the revenue estate of the aforesaid village, a letter dated 27.12.2018 had been written to the SHO Police Station Handesra to take action against persons who have raised construction over '*Khasra*' no. 377.

The affidavit is taken on record.

However, it is to be specifically noticed that this Court had not directed any specific action to be taken by the police or any other authority and consequently, any action being taken by the BDPO or any other officials, including the police, would be entirely of their own motion, the only question in this revision petition before this Court, being whether the learned trial Court correctly or erroneously dismissed the application filed by the petitioner (plaintiff) under Order 39 Rules 1 and 2 CPC.

At this stage, Mr. Bajwa, learned Addl. A.G., Punjab has pointed out that as a matter of fact the application of the petitioner has still not been finally decided by the trial Court, with only an *ex parte* injunction having been refused, as would be obvious from the impugned order itself.

A perusal thereof shows that what learned State counsel has submitted is absolutely correct, with this Court having obviously glaringly missed that fact.

Consequently, without making any comment whatsoever on the actual merits of the case of the petitioner-plaintiff, this petition is disposed of with a direction to the learned trial Court to hear the respondents and thereafter finally

dispose of the application under Order 39 Rule 1 and 2 CPC as per law, wholly on its own merits; but in the meanwhile, this Court already having called for the affidavit of respondent no. 6 to determine as to whether an interim injunction at least at this stage, should be granted to the petitioner or not, since the suit land is contended to be public land, till the final decision of the application under Order 39 Rule 1 and 2, status quo shall be maintained by the parties.

It is also made amply clear again, that despite this Court having called for the affidavit of respondent no. 6, nothing stated even on affidavit before this Court shall be taken to be an affirmation by this Court of such averments made, with the trial Court to decide both, the application under Order 39 Rule 1 and 2, as also the suit itself, wholly on the merits of the evidence led before it.

January 25, 2019
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No.