

CR-5500-2015 (O&M)

207

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

CR-5500-2015 (O&M)

Date of decision : 31.01.2019

Tek Chand and others

... Petitioners

Versus

Kishan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.K. Sood, Advocate
for the petitioners.

Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderjit Singh, Advocate
for respondent Nos.2 and 3.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 22.07.2015 (Annexure P1), whereby while allowing the application under Section 151 of the Code of Civil Procedure, the petitioners-defendants, have ordered to restore the possession of the suit land to respondent Nos.2 & 3.

The trial Court, vide order dated 29.08.2012 (Annexure P-10) allowed the application submitted by the respondents herein and plaintiffs in the suit No.61 of 2012 and restrained the petitioners, who were defendants in the suit, from interfering into possession of the area by mentioning specific khasra number in the following manner:-

"As a consequence of above discussion, application under Order 39 Rule 1 & 2 CPC in hand is allowed with the

CR-5500-2015 (O&M)

directions to the defendants in the Civil Suit No.61/6.2.12 Tek Chand and others to not interfere in the possession of the plaintiffs in the specific khasra numbers mentioned in that suit. However, as a local commissioner has been appointed, plaintiffs in that suit will not demolish or change the nature or any existing structure of Piyao and Temple in the suit land"

Vide Annexure P-11, the respondents alleged the violation of the impugned order in the following manner:-

"3. That a old stricture in the shape of abundant room is existing in the suit land over an area measuring 20ft. X 30 ft. approx. The defendants with the aid of some antisocial elements of the village in the mid night of dt. 04.09.2012 trespassed in the said structure and installed a big slab made of stone in our room. The defendants also painted it with red colour to create delusion as it is a sculpture of Hanuman, with mala fide intention for creating evidence and to create continuous nuisance and obstruction in the user occupation on the suit property by the lawful owner/plaintiffs."

Learned counsel for the petitioner submitted that the application was bereft of any particulars or element of dispossession except installation of one slab. No issue, in this regard, has been framed or evidence has been brought on record to establish the violation of the order, therefore, the impugned order, under challenge, directing the petitioners to restore the possession, is wholly infirm and fallacious.

Mr. Sanjay Majithia, learned Senior Counsel assisted by Mr. Inderjit Singh, learned counsel appearing on behalf of respondent Nos.2 and 3, submitted that the impugned order, is perfectly, legal and justified. The contents of application was self explanatory as anti-social elements had

CR-5500-2015 (O&M)

been creating ruckus, installation of slab is reflection of the same. The order of the Court, in such circumstances, has to be regarded and respected and can always be implemented by invoking the provisions of Section 151 of CPC. In support of his contentions, reliance has been laid to the ratio decidendi culled out by Hon'ble the Supreme Court in **Meera Chauhan V/s Harsh Bisnoi and another, 2007 (1) RCR (Civil) 597.**

I have heard learned counsel for the parties, appraised the paper book and of the view that the impugned order is bereft of reasoning as on conjoint reading of the contents of the application as well as the interim stay, there was no categoric finding as to how and under what manner, the petitioners, defendants in the suit, have taken the possession. It requires determination and a categoric finding to that effect. In this view of the matter, the impugned order is hereby set aside the matter is remitted to the trial Court to decide the application (Annexure P-11) afresh in view of the observations made herein above as well as in accordance with law as expeditiously as possible.

The present revision petition stands disposed of.

31.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**