

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 108

Case No. : C. R. No. 5771 of 2018 (O&M)

Date of Decision : January 08, 2019

Kuljit Singh		Petitioner
vs.		
Gian Singh		Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Jaideep Verma, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral) :

Through the present petition, challenge is made to the order dated 21.02.2018, passed by Civil Judge (Senior Division), Fatehgarh Sahib (for short – the Trial Court), dismissing the application filed by the petitioner-plaintiff under Order 39 Rules 1 and 2 CPC, through which he had sought to restrain the respondent-defendant from alienating 11 acres of land owned by the respondent; order dated 22.05.2018 passed by Additional Sessions Judge, Fatehgarh Sahib (for short – the Appellate Court), through which the petitioner's appeal against the aforesaid order of the Trial Court dated 21.02.2018 has been dismissed; order dated 17.04.2018 passed by the Trial Court permitting the respondent to sell 06 acres of land and order dated 02.07.2018 passed by the Trial Court dismissing an application filed by the petitioner under Order 38 Rule 5 (3) CPC, through which he had

respondent.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the petitioner filed a suit against the respondent seeking therein recovery of Rs.20,00,000/-. Interest @ 18% per annum was also sought. Along with the suit, the petitioner filed an application under Order 39 Rules 1 and 2 CPC seeking therein issuance of interim directions to the respondent to restrain him from alienating 11 acres of land owned and possessed by him so that such land could be later sold to satisfy the decree which may be passed in favour of the petitioner.

The Trial Court, after observing that the respondent could alienate his property only with the prior permission of the Court, dismissed the petitioner's application. The petitioner filed an appeal against the aforesaid order which was also dismissed by the Appellate Court. Thereafter, the respondent filed an application before the Trial Court seeking permission of the Court to sell 06 acres out of 11 acres of land owned by him. After recording a specific finding that the value of the property was about Rs. 1.5 crores per acre and the suit filed by the petitioner was for recovery of only Rs.20,00,000/-, as also for the reason that the respondent was owner of a total of 11 acres of land, the Trial Court permitted the respondent to sell 06 acres of his land. The petitioner then filed another application under Order 38 Rule 5 (3) CPC seeking therein issuance of conditional warrants of attachment of the remaining land owned by the respondent. Such application was also dismissed by the Trial Court after holding that the petitioner's suit was yet to be finally adjudicated upon

and in any case, if a money decree was passed in favour of the petitioner,

the same would be satisfied in accordance with law. It was also found that the petitioner had based his entire case on apprehensions.

Learned counsel for the petitioner has been heard at length.

The petitioner seeks to restrain the respondent from alienating his land to secure the satisfaction of the decree which may be passed in his favour in the recovery suit filed by him. Through his suit, the petitioner seeks to recover from the respondent a sum of Rs.20,00,000/- along with interest. The suit is yet to be adjudicated upon. He has filed his applications for restraining the respondent from alienating his property as also for the issuance of conditional warrants of attachment of the same on mere apprehensions and assumptions. Even otherwise, it is not disputed that the respondent owns about 11 acres of land and if the 06 acres of land, for which he has sought permission to sell, is alienated by him, the remaining 05 acres are worth over at least Rs. 05 crores. That being so, no error is found in the impugned orders warranting interference under Article 227 of the Constitution of India especially when the Trial Court as also the Appellate Court have issued specific directions that the respondent can sell his property only after seeking prior permission of the Court.

Dismissed.

(DEEPAK SIBAL)
JUDGE

January 08, 2019
monika

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.