

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 7380 of 2018 (O&M)
Date of decision: 9.5.2019

Davinder Kumar and another

.. Petitioners

v.

Harjinder Singh and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. G. S. Sirphikhi, Advocate for the petitioners.

...

AVNEESH JHINGAN, J. (Oral)

Aggrieved of the order dated 7.3.2018 passed by the Civil Judge, Junior Division, Amritsar dismissing the application filed under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'CPC') and order 3.8.2018 passed by the Additional District Judge, Amritsar dismissing the appeal filed against order dated 7.3.2018, the present revision petition has been filed.

The facts in brief are that the petitioners-plaintiffs (hereinafter referred to as 'the petitioners') filed a suit for permanent injunction on the ground that the petitioners are co-sharers of eight marlas area i.e. plot Nos. 37 and 38 (details mentioned in the head note of the plaint). It was pleaded that the petitioners purchased the plots from Amrit Pal Singh attorney of Harvinder Singh vide sale deed dated 28.3.2016. Written statement was filed by the respondents-defendants (hereinafter referred to as 'the respondents') rebutting the claims made in the plaint. The respondents relied

upon a sale deed dated 21.7.1999 showing that they had purchased plot No. 38 from Anupam Advansers Pvt. Ltd. through its Director-Lal Chand. Further reliance was placed upon the sale deed dated 9.2.1998 whereby Baljit Kaur had sold the property to Anupam Advansers Pvt. Ltd.

During the pendency of the suit, an application under Order 39 Rules 1 and 2 read with Section 151 CPC was filed by the petitioners which was dismissed considering the *prima facie* case. It was opined that the respondents were able to show the chain of ownership of property in dispute that it was originally owned by Baljit Kaur who sold it to Anupam Advansers Pvt. Ltd. and Anupam Advansers Pvt. Ltd. further sold it to the respondents. Whereas the petitioners only relied upon the sale deed in their favour showing sale of property in dispute by Harvinder Singh (GPA) to them.

Learned counsel for the petitioners argues that the suit was merely for permanent injunction. The courts were not required to go into the title of the property, moreso, when the possession of the petitioners is admitted in the FIR. He relies upon a jamabandi in favour of Harvinder Singh to show that he was the owner of the property.

While granting interim injunction, three basic principles, i.e. prima facie case; balance of convenience and irreparable loss or injury, are to be considered in a proper perspective in the facts and circumstances of a particular case.

In Pankaj Kumar v. State of U. P. and 3 Others, 2017(2) RJ 900, Allahabad High Court has held as under:

“26. In Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd. [AIR 1999 SC 3105], this Court observed

that the other considerations which ought to weigh with the Court hearing the application or petition for the grant of injunction are as below:

- “(i) Extent of damages being an adequate remedy;
- (ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason therefor;
- (iii) The Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;
- (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case-the relief being kept flexible;
- (v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;
- (vi) *Balance of convenience* or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;
- (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.”

Order 39 Rules 1 and 2 CPC is reproduced below:

**“ORDER XXXIX : TEMPORARY INJUNCTIONS AND
INTERLOCUTORY ORDERS**

Temporary injunctions

1. Cases in which temporary injunction may be granted

Where in any suit it is proved by affidavit or otherwise

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or dispossession of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until tile disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach

(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgement, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained, of, or any breach of contract, or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may be order grant such injunction, on such terms as to the of the durations injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.”

As per the decision of the Supreme Court, *prima facie* case and balance of convenience in favour of the plaintiff is to be seen as it has been seen by the courts below. The scope of interference in the stay order is limited. In the case in hand, the respondents have relied upon the sale deed much prior in time from the one relied upon by the petitioners. The sale deed in favour of the respondents executed by Anupam Advansers Limited is of the year 1999. The earlier sale deed by Baljit Kaur in favour of Anupam Advansers Limited is of February, 1998, whereas the sale deed relied upon by the petitioners is of March, 2016. There is no quarrel on the proposition that in a suit for permanent injunction, the question of title is not to be decided but that does not preclude the court from seeing the *prima facie* case and balance of convenience in favour of the party.

Reliance of learned counsel for the petitioners on a jamabandi does not enhance the case of the petitioner, as it is not a document of title.

The contention raised by learned counsel for the petitioners that the respondents registered an FIR on 28.2.2018 wherein it has been admitted that the petitioners are in possession of the suit property is not well founded. A statement for recording the FIR itself will not be considered as admission, moreso when there is no such specific admission in the written statement filed in the suit. From the perusal of the FIR, it is forthcoming that crux of the grievance was that fake documents were prepared to sell the property to the petitioners and to deliver unauthorised possession thereof.

In view of the above discussion, no interference is called for in the impugned orders.

The revision petition is dismissed. However, it is clarified that nothing expressed in the order shall be construed as an expression of opinion on the merits of the case.

(AVNEESH JHINGAN)
JUDGE

9.5.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No