

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 961 of 2019

Date of Decision: 19.03.2019

Jeet Dass and others

.....Petitioners

Vs.

Swaran Kaur and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sanjiv Gupta, Advocate,
for the petitioners.

Mr. Parveen K. Kataria, Advocate,
for the respondents-caveators.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioners challenge the order of the learned Additional District Judge, Sangrur, dated 31.01.2019, by which their application invoking the power of the Court under Order 39 Rules 1 and 2 of the CPC, read with Section 151 thereof, has been dismissed, holding that when the present petitioners (appellants before the appellate Court and plaintiffs in the suit) had already been granted the relief of permanent injunction, then “under the pretext of their apprehension regarding dispossession”, they cannot prefer another suit against respondent no. 1, who has derived interest in the property from her vendors; and the plaintiffs have an alternative remedy to proceed against the respondents if they are disobeying the judgment and decree dated 21.11.2012 earlier passed by the Additional Civil Judge (Senior Division), Sangrur.

It was further observed that instead of “preferring a case” in terms of

Rule 32 of Order XXI in the execution proceedings, the suit in question (out of

which the appeal arose before the Additional District Judge), was filed, which *prima facie* was not sustainable.

Yet further, it was observed that the plaintiffs were challenging the partition proceedings conducted before the revenue authorities and therefore they should have actually moved those authorities instead of filing the suit in the present *lis*.

At the time when notice of motion was issued in this petition on 08.02.2019, the following order had been passed:-

“Learned counsel for the parties have both relied upon various judgments in respect of the contentions made by them.

Mr. Gupta, learned counsel for the petitioner, submits that the petitioners having no locus to participate in the partition proceedings before the revenue authorities, they had challenged such proceedings by way of a suit instituted, on the ground that they are occupancy tenants in terms of Section 5 of the Punjab Tenancy Act, 1887 and therefore, by virtue thereof, they have a prior right of occupancy over the suit land. That suit having been dismissed but the appeal having been admitted by the appellate Court, therefore an interim injunction would be a natural corollary thereto, the prayer in the suit also being for a decree of perpetual injunction to be issued against the respondents-defendants.

In support of his contention that upon a first appeal being admitted an interim stay should be granted by the appellate Court, he relies upon a judgment of the Supreme Court in Mool Chand Yadav and another vs. Raza Buland Sugar Company Limited, Rampur and others (1982) 3 SCC 484, as also one of a co-ordinate Bench of this Court in Santa Singh and others vs. State of Punjab and another 2011 (54) RCR (Civil) 81, and one of a co-ordinate Bench of

the Rajasthan High Court in Mooli (Mst.) and others vs. Kajormal (deceased) through LRs 2006 (15) RCR (Civil) 418.

Per contra, learned counsel for the respondents-caveators submits that the impugned order having very clearly stated that the remedy with the petitioners was under Order XXI Rule 32 CPC, or before the revenue authorities, such order does not call for interference by this Court.

The observation with regard to the remedy under Order XXI Rule 32 CPC, is obviously because of the fact that a decree of injunction already exists in favour of the petitioners, in another lis between the same parties/their predecessors-in-interest.

He relies upon a judgment of the Delhi High Court passed in Raj Narain Aggarwal vs. Baij Nath Khanna AIR 1984 Delhi 155, two judgments of the co-ordinate Benches of this Court, in Balbir Singh and others vs. Ram Kumar and others 2014 (54) RCR (Civil) 230 and Bihari Lal and another vs. Ram Rati and others (RSA No. 3420 of 2009, decided on 20.07.2011) and one of the Supreme Court in State of Punjab and another vs. Balkaran Singh AIR 2007 SC 641.

Notice of motion.

The respondents-caveators obviously stand served.

For arguments, adjourned to 12.03.2019.

To be taken up immediately after the urgent list.

In the meanwhile, warrants issued for eviction of the petitioners be not executed till the next date of hearing only and specifically.”

Thereafter, on 12.03.2019, the following order was passed:-

“On a request made by Mr. Gupta, adjourned to 19.03.2019, with him to specifically address arguments as to

how a suit by a tenant would be maintainable seeking a declaration that partition proceedings initiated by the owners of the suit land be declared to be null and void; with learned counsel for the respondents on the other hand to address arguments as to why a suit seeking permanent injunction against the operation of an order passed in such partition proceedings, granting possession to the land-owners without the tenant being impleaded in such partition proceedings (as he is obviously not required to be so), should not be decreed in favour of the tenant, with the landlord otherwise at liberty to institute proceedings for taking lawful possession of the suit property.

Interim order to continue.”

Today, Mr. Gupta, learned counsel for the petitioners, has referred to Sections 111, 113 and 117 of the Punjab Land Revenue Act, 1887, to submit that the petitioner was a necessary party in the partition proceedings even being a tenant on the land in question.

Without however going into that issue, as it may affect the merits of the appeal itself, with learned counsel for the respondents, who was to address arguments on why the petitioners should not be granted the interim relief *qua* their prayer for permanent injunction in the suit, has submitted that the order impugned in the present petition being only one arising out of an application filed under Order 39 Rules 1 and 2 CPC, the petition may be allowed and the appellate Court may be directed to dispose of the appeal itself on merits within a particular time frame.

That being so and the aforesaid contention made by Mr. Kataria, learned counsel for the respondents, found to be very reasonable by this Court, this petition is disposed of with a direction to the learned appellate Court to finally decide the appeal preferred by the present petitioners within a period of four

months from today, with the dispossession of the petitioners from the suit property to remain stayed during the pendency of that appeal.

Any observations made by this court, and in the impugned order shall, naturally, not affect the outcome of the appeal on merits and shall be treated by the appellate Court itself to be observations made only in the context of the application that it was disposing of, with the parties therefore completely at liberty to address arguments before that Court, in terms of all legal issues arising therefrom.

March 19, 2019
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No.