

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

**CR No.1827 of 2019
Date of Decision: 15.03.2019**

Surinder Pal Singh

..... Petitioner

versus

The Registrar, Cooperative Societies (Punjab) and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Sudhir Paruthi, Advocate
for the petitioner.

SUDIP AHLUWALIA J. (ORAL)

1. This revision petition is directed against the impugned order dated 01.03.2019 passed by the Ld. Additional District Judge, Jalandhar (Annexure P-3) vide which the application of the petitioner, who was the appellant in Civil Appeal No.80 of 2016, seeking temporary injunction under Order 39 Rule 1 and 2 of the CPC was dismissed.

2. Background of the matter is that the petitioner had filed a suit for declaration to the effect that the alleged Power of Attorney dated 11.09.1990 purportedly issued by him in favour of one Palwinder Singh was false and fabricated and consequently, the alleged Special Power of Attorney dated 17.12.1990 executed by Palwinder Singh on behalf of the petitioner in favour of respondent No.3 and others was null and void on account of which no title was passed in favour of respondent No.2-Society, and as such the petitioner had sought a permanent injunction to restrain the respondents-defendants from dispossessing him from the disputed land. The suit was dismissed on merits and the appeal was thereafter, filed by the petitioner in which he moved the aforesaid application for temporary injunction.

3. Having gone through the impugned order, this Court finds no reason to interfere with the same. Not only the petitioner had lost on merits in the original suit, but there was also the existence of a separate judgment and decree against him passed in favour of respondent No.2 in Civil Suit No.315 of 1996.

4. The petitioner is aggrieved that order of Ld. Court below has placed undue reliance on the above judgment. It is however to be noted that the aforesaid judgment has apparently attained finality, and so for the purpose of deciding an application for temporary injunction, the Ld. Court below had to *prima facie* see in whose favour and a better *prima facie* case and balance of convenience stood. The existence of the separate decree against the petitioner apart from dismissal of his own suit was certainly a matter of substantial importance for the purpose of deciding the injunction application. The Ld. Court below was, therefore, right in its conclusion that in view of the history of the petitioner losing the earlier litigations involving himself and the respondent concerning the same subject matter, it could not be said that he had a strong *prima facie* case in his favour, or that the balance of convenience was with him.

5. Reliance of the petitioner is on the decision of the Himachal Pradesh High Court reported in “***Shiv Ram vs. Nuratta and others***” - 2006 AIR (H. P.) 47, in which it was observed *inter alia* “One cannot lose sight of the fact that in the present case it was a first appeal which was filed before the learned lower appellate Court. He has still to hear and decide the matter on merits. If the reasoning of the lower appellate Court is taken to its logical conclusion then in no case can an appellate Court stay the

decree or judgment passed by the trial Court. This would render nugatory the provisions of Order 41, Rule 5, Civil Procedure Code. The parties can demonstrate before the appellate Court that they are entitled to grant of injunction or stay of decree. The appellate Court is not bound by the findings of the trial Court, even at this stage”.

6. Such reliance in the given facts and circumstances, is also not helpful to the petitioner at this *prima facie* stage, since there is hardly any material to show on the face of the record as to how the impugned judgments in favour of the respondents are manifestly perverse.

7. This Court, therefore, finds no merit in the present petition which is accordingly dismissed.

March 15, 2019

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**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/ reasoned : Yes/ No

Whether reportable : Yes/ No