

CR No.2482 of 2019

{1}

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.2482 of 2019

Date of decision:11.04.2019

Avtar Singh Bedi

... Petitioner

Vs.

Jagpal Singh Bedi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate, for the petitioner.

AMIT RAWAL J. (Oral)

The present revision petition is directed against the impugned order dated 11.03.2019 whereby application under 7 Rule 11 of Code of Civil Procedure of the petitioner seeking rejection of the plaint claiming injunction, has been dismissed.

Mr. Arun Jain, learned senior counsel assisted by Mr. Amit Jain, Advocate appearing on behalf of the petitioner submitted that on 10.09.2018 respondent-plaintiffs filed the suit for permanent injunction against the petitioner-defendants seeking restraint against them from interfering in the management, control and performing religious rituals of Gurdawara Sh.Chola Sahib during monthly turns of Sh.Chola Sahib held from 1.12.2018 to 28.02.2019 and annual turn of Mela Sh.Chola Sahib as per the turn of the plaintiffs and defendants which has already been held from 1st March to 10 March of every year and as well as for collecting the offerings. Alongwith suit, an interim application was filed but there was ex parte ad interim injunction.

On receipt of the notice, the petitioner-defendants had filed the written statement taking all preliminary objections qua maintainability, under Order 7 Rule 11 CPC, Order 2 Rule 2 CPC, suit had been rendered infructuous, guilty of mis-representation of facts but fact of the matter is that suit in the absence of declaration, simpliciter for injunction was not maintainable. The defendants emphatically denied the possession and control of the plaintiffs, prior to the suit. Even otherwise suit had become infructuous in the absence of ad interim injunction. Attention of this Court was also drawn to the prayer which was not in consonance with the provisions.

I have heard the learned counsel for the petitioner, appraised the paper book. It would be apt to reproduce the head note of the plaint. The same reads as under:-

“Suit for permanent injunction restraining the defendants from preventing the plaintiffs from interfering in the management and control and performing religious rituals of Gurdawara Sh. Chola Sahib during the monthly turns of Sh. Chola Sahib which is being held from 1.12.2018 to 28.02.2019 and during the annual turn of Mela Sh.Chola Sahib as per the plaintiffs and defendants which is being held from 1st March to 10 March of every year as per their turn with defendants and receiving or collecting any kind of offering which will be made by the devotees, monthly festivals etc before Gurdawara Sh. Chola Sahib of Sh. Guru Nanak Dev Ji at Gurdwara Sh. Chola Sahib,

Dera Baba Nanak, District Gurdaspur to the extent of their shares or interfering in the performance of their duties as per the agreements executed amongst the parties/ancestors of the parties.”

Parties to the lis are close relatives. For the purpose of adjudication of an application of such nature, pleadings in the plaint have to be seen, not the defence, until and unless the pleadings tantamount to withholding of the material facts, the previous history or any adjudication/litigation, though the petitioner had already chosen to contest the suit by raising preliminary objection which was not accepted by the trial Court simply on account that being question of evidence.

I am of the considered view that the plaint particularly for injunction, as relief of injunction is always occurs as and when threat perception is triggered, cannot be thrown out in the manner and mode as sought but it would be in the fitness of things for the defendants to undertake the task of admission and denial at time of framing of issues, may feel necessary, seek adjudication of the maintainability by way of preliminary issue.

The revision petition stands disposed of while upholding the impugned order.

April 11, 2019
savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No