

134

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

CR No.3782 of 2019

Date of decision: June 06, 2019

Sanjay and others

.....Petitioners

Versus

Smt. Sunita and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Naveen S. Bhardwaj, Advocate for the petitioners.

MAHABIR SINGH SINDHU, J (Oral)

Present petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 24.05.2019 (P-6) passed by learned Civil Judge (Junior Division), Bhiwani (hereinafter referred as 'trial Court'), whereby interim relief has been declined to the petitioners being plaintiffs.

Brief facts of the case are that petitioners filed a suit for permanent injunction restraining the defendants-respondents from interfering in their peaceful possession of the land measuring 5 Kanal 10½ Marlas as disclosed in the head-note of the plaint being mortgagees. Along with the civil suit, an application under Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908 (for short 'CPC') for temporary injunction was also moved and the same is pending on 04.07.2019, but interim relief has been declined to the plaintiffs-petitioners while passing the impugned order. Hence, the present petition.

It is contended by learned counsel for the petitioners that

impugned order is not legally sustainable in view of the fact that same is absolutely non-speaking and learned trial Court has failed to take into consideration that respondents are not having any valid title over the land in dispute.

Heard learned counsel for the petitioners and perused the paper-book.

Petitioners in this case are claiming themselves to be mortgagees of the land in dispute through their predecessors-in-interest. In Para-9 of the plaint (P-5), petitioners have averred that original owners became greedy and consequently, executed various sale-deeds in favour of the respondents-defendants regarding the land in dispute without getting the same redeemed, thus, there is no transfer of valid title.

On the other hand, as transpires from the impugned order, the pleas of the defendants-respondents are that one of plaintiff-petitioner No.1, namely, Sanjay himself is a witness to one of the sale-deeds wherein it is specifically mentioned that possession of the land in question has been handed-over to the defendants-respondents. The above factual position has not been controverted on behalf of the petitioners during the course of hearing and even the sale-deeds are neither the subject matter of challenge before learned trial Court; nor appended with the present petition, for the reasons best known to them. Therefore, this Court will accept the stand taken on behalf of the defendants-respondents to the effect that petitioner No.1-Sanjay is the witness to one of the sale-deeds. If that be so, learned trial Court has rightly declined to

grant interim injunction in favour of the petitioners to avoid any further complication in the matter.

On the point of maintainability of the present petition also, learned counsel for the petitioners was confronted by this Court, but he made submissions that since impugned order has been passed while declining the *ad-interim* injunction and this is not the final adjudication of the application filed under Order 39 Rule 1 & 2 CPC, and as such, present petition under Article 227 of the Constitution of India is the only remedy available with the petitioners and no appeal lies against such an order. However, this Court is not inclined to accept the plea of the petitioners on the point of maintainability as well in view of the provisions of Section 104 read with Order XLIII Rule 1(r) of CPC and rereference in this regard can be made to judgment of Hon'ble Supreme Court in the case of A. Venkatasubbiah Naidu versus Chellappan and others, AIR 2000 Supreme Court 3032 and Paragraphs-11 and 20 of the same being relevant read as under:-

“11. It cannot be contended that the power to pass interim ex parte orders of injunction does not emanate from the said Rule. In fact, the said rule is the repository of the power to grant orders of temporary injunction with or without notice, interim or temporary, or till further orders or till the disposal of the suit. Hence, any order passed in exercise of the aforesaid powers in Rule 1 would be appealable as indicated in Order 43, Rule 1 of the Code. The choice is for the party affected by the order either to move the appellate court or to approach the same Court which passed the ex parte order for any relief.”

“20. Now what remains is the question whether the High Court should have entertained the petition under Article 227 of the Constitution when the party had two other alternative remedies. Though no hurdle can be put against the exercise of the constitutional powers of the High Court it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of

such remedies one or the other before he resorts to a constitutional remedy. Learned single judge need not have entertained the revision petition at all and the party affected by the interim ex parte order should have been directed to resort to one of the other remedies. Be that as it may, now it is idle to embark on that aspect as the High Court had chosen to entertain the revision petition.”

Perusal of Paragraphs-11 and 20 extracted hereinabove make it apparently clear that, although, impugned order is interim in nature, still, the petitioners have remedy of appeal instead of straightway rushing to this Court while invoking jurisdiction under Article 227 of the Constitution of India, therefore, this Court reject the submission of the petitioners on the ground of maintainability also.

In view of the facts and circumstances discussed hereinabove, this Court is left with no option, except to dismiss the petition.

Ordered accordingly.

However, it is clarified that observations made above may not be construed as an expression of opinion on the merits of the case.

Learned trial Court is requested to decide the pending application under Order 39 Rule 1 & 2 CPC on the date fixed, if not possible, as earlier as possible.

(MAHABIR SINGH SINDHU)
JUDGE

June 06, 2019

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No