

CR No.4142 of 2019 (O&M)

Date of Decision:18.07.2019

PANKAJ SINGH AND ANOTHER

...Petitioners

Versus

AMANDEEP SINGH AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Paramjit Batta, Advocate
for the petitioners.

Mr. Gurmohan Singh Bedi, Advocate with
Mr. Pawandeep Singh, Advocate for
for respondents No. 1 to 5, 7 to 9, 11 & 12.

Mr. A.P.S. Rehan, Advocate
for respondent No.6.

DEEPAK SIBAL, J. (ORAL)

Learned counsel for the petitioners, on instruction from petitioner No.2, seeks and is granted permission to withdraw the allegations made in paragraphs 4 and 10 of the grounds of the petition.

The present petition has been preferred to challenge therein order dated 25.06.2019 passed by the Additional District Judge, Hoshiarpur (for short-the Appellate Court), through which, while entertaining the respondents' appeal filed by them against the order dated 31.05.2019 passed by Civil Judge (Junior Division), Mukerian (for short-the Trial Court), the Appellate Court, by way of an interim arrangement, has granted permission to the respondents to raise construction in the portion of the suit land of

which they allege to be in exclusive possession.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition, are that the petitioners filed a suit for partition of the property detailed and described in the head note of the plaint (for short-the suit property). Permanent injunction to restrain the respondents-defendants from raising any kind of construction over the suit property was also sought. Along with their suit, the petitioners filed an application under Order 39 Rules 1 & 2 CPC for grant of *ad interim* injunction.

The petitioner's suit came up for hearing before the Trial Court on 02.05.2019 on which date notice was issued to the respondents-defendants and subject to compliance of the Order 39 Rule 3 CPC ad-interim injunction was granted restraining the respondents-defendants from raising any construction on the suit property. Thereafter through the order dated 31.05.2019, the Trial Court finally adjudicated upon the application under Order 39 Rules 1 and 2 CPC by confirming its ad-interim stay order passed on 02.05.2019.

Respondents No.1, 2, 3, 4, 5, 7, 8, 9, 11, 12 and 13 challenged the aforesaid order of the Trial Court dated 31.05.2019 before the Appellate Court. Their appeal came up for initial hearing on 25.06.2019 on which date, while issuing notice, on the basis of an undertaking given by learned counsel for the appellants therein that his clients would remove the construction if the part of the suit property on which it was made came to the share of the petitioners, at their own risk and responsibility, the appellants were permitted to raise construction. The next date of hearing in

Learned counsel for the parties have been heard.

On 31.05.2019, after hearing learned counsel for the parties as also perusing the relevant record, in a partition suit preferred by the petitioners, the Trial Court allowed the application filed by the petitioners under Order 39 Rules 1 & 2 CPC and resultantly, till the partition of the suit property, except in due course of law and subject to permission of the Court, restrained the defendants in the suit from raising any type of construction over the suit property. In an appeal filed by respondents No. 1, 2, 3, 4, 5, 7, 8, 9, 11, 12 and 13 against the aforesaid order, the Appellate Court, at the stage of issuance of notice, without hearing the petitioners, virtually set at naught the order of the Trial Court which had been passed after hearing counsel for the parties and consideration of the relevant revenue record.

In the above facts, the procedure adopted by the Appellate Court is found to be erroneous.

Since the appeal filed by the respondents No. 1, 2, 3, 4, 5, 7, 8, 9, 11, 12 and 13 is still pending, therefore, without making any further observations on merits, lest it may prejudice either party, the Appellate Court is directed to take a final decision on the aforesaid appeal expeditiously. It is further directed that till the final adjudication of the appeal, the parties shall maintain status quo with regard to construction over the suit property.

The petition is disposed of in the above terms.

July 18, 2019

(DEEPAK SIBAL)
JUDGE

Jyoti-1 Whether speaking/reasoned Yes/No Whether Reportable Yes/No