

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 104

CR-4863-2019

Date of decision : 17.08.2019

Mohd. Akram

..... Petitioner

VERSUS

Salma and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Gaurav Sharma, Advocate, for the petitioner.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 03.12.2018, passed by the Civil Judge (Junior Division), Faridabad (for short, the Trial Court), through which an application filed by the petitioner/plaintiff seeking therein *ad interim* injunction has been dismissed. Also under challenge is the order dated 31.05.2019, passed by the Additional District Judge, Faridabad (for short, the Appellate Court), through which the petitioner's appeal filed by him against the aforesaid order of the Trial Court has been rejected.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the petitioner filed a suit seeking therein a decree of permanent injunction to perpetually restrain the respondents from selling, alienating or transferring the property, detailed and described in para 1 of the plaint (for short, the suit property). The respondents were also sought to be restrained from raising any construction over the suit property. Alongwith the suit, the petitioner filed an application under Order 39 Rules 1 and 2 CPC seeking therein *ad interim* injunction.

On being put to notice, the respondents, who were the defendants in the suit, appeared before the Trial Court and filed an application under Order 7 Rule 11 CPC seeking rejection of the petitioner's plaint *inter alia* on the ground that the same was not maintainable as vide judgment dated 19.01.2018 the

petitioner's eviction petition between the same parties had already been rejected by the Appellate Authority, Faridabad against which the petitioner filed a revision petition before this Court in which no stay has been granted. On the other hand, the petitioner sought acceptance of the application filed by him under Order 39 Rules 1 and 2 CPC seeking therein *ad interim* injunction.

The Trial Court rejected the petitioner's application filed by him under Order 39 Rules 1 and 2 CPC. His appeal filed against such rejection also met the same fate occasioning the filing of the present petition.

Learned counsel for the petitioner has been heard.

The petitioner filed a suit seeking therein to permanently injunct the respondents from selling, alienating or transferring the suit property to any third party as also for restraining them from raising any kind of construction over it. Alongwith his suit the petitioner filed an application under Order 39 Rules 1 and 2 CPC for *ad interim* injunction.

The petitioner has primarily based his suit as owner of the the suit property which he claims to have purchased in the year 2003 from one Hazi Nisar. However, the petitioner has failed to produce any sale deed in this regard. He has also not produced any proof of title of the aforesaid Hazi Nisar authorizing him to sell the suit property to the petitioner.

The record reveals that in an earlier point of time the petitioner had initiated eviction proceedings against the respondents under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973. Such petition of his was accepted by the Rent Controller, Faridabad which order was set aside by the Appellate Authority against which the petitioner has preferred a revision petition before this Court which is pending and in which no interim order has been passed in his favour. In the course of leading evidence in such proceedings, the petitioner, while appearing before the Rent Controller,

Faridabad admitted that the suit property had been constructed over the land which was owned by the Municipal Corporation, Faridabad (for short, the Corporation) and that the Corporation had not executed any sale deed in his favour.

In view of the above, no error is found in the orders passed by the Trial Court as also the Appellate Court declining the grant of *ad interim* injunction to the petitioner especially when the Appellate Court has protected the petitioner's rights by observing in its order that during the pendency of the petitioner's suit if any transfer is made by the respondents, the same shall be governed by the principle of *lis pendence* and that if any construction is raised by the respondents over the suit property the same shall abide by the final decision in the petitioner's suit.

Dismissed.

17.08.2019
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No