

CR No.1932 of 2020

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

CR No.1932 of 2020

DECIDED ON: July 02, 2020

RAJENDER

..PETITIONER

VERSUS

LALIT KUMAR AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Tanmoy Gupta, Advocate, for the petitioner.

SUDHIR MITTAL, J.

The defendant is before this Court against order of the Appellate Court dated 01.06.2020 whereby the plaintiff's appeal against order dated 15.05.2020 passed on an application filed under Order XXXIX Rules 1 & 2 read with Section 151 of CPC has been allowed. The defendant has been injunctioned partially as parties have been directed to maintain status quo regarding construction over the suit property till decision of the suit.

2. Plaintiff-respondent No.1 has filed a suit dated 03.05.2020 for permanent injunction and mandatory injunction on the plea that the suit land measuring 27K-01M situate in Village Daultabad, Sub-Tehsil Kadipur, District Gurugram is his ancestral property and that he along with his sisters and mother (proforma defendants) have been in cultivating possession thereof. Petitioner-defendant No.1 filed an application for partition before the revenue authorities in which dasti summons dated 02.07.2018 were got

CR No.1932 of 2020

issued. The signatures of the plaintiff and proforma defendants were forged and report of service was obtained in collusion with Rajbir, Namberdar of Village Daultabad. Consequently, they were proceeded against ex parte and the land was illegally partitioned vide order dated 18.06.2019 passed by the Assistant Collector 2nd Grade, Kadipur. The plaintiff and proforma defendants acquired knowledge of this order in November, 2019 when the petitioner attempted to raise construction. Immediately, appeal dated 29.11.2019 was filed against the order dated 18.06.2019. In February, 2020, a police complaint as well as a petition under Section 156(3) Cr.P.C. were also filed. The petitioner-defendant No.1 stopped his activity for sometime but in May, 2020 he again attempted to raise construction leading to the filing of the suit. Along with this suit, an application under Order XXXIX Rules 1 & 2 read with Section 151 of CPC was also filed with a prayer for ad interim temporary injunction.

3. In the written statement of the petitioner-defendant No.1 it has been pleaded that the suit deserves dismissal on account of concealment of relevant facts such as possession being handed over on 06.07.2019 pursuant to warrants of possession having been issued. Maintainability of the suit has also been questioned in view of Section 41(h) of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act'). On merits, the allegations regarding forgery and of obtaining the service report in collusion with Rajbir, Namberdar of Village Daultabad have been denied. Further, it has been stated that after taking over of possession, the land in dispute has been enclosed with a boundary wall and two rooms have also been constructed.

4. Vide order dated 15.05.2020, the trial Court dismissed the application seeking temporary injunction on the ground that the plaintiff had

CR No.1932 of 2020

failed to show his ownership of the property in dispute and that possession having been handed over to defendant No.1, no injunction could be granted.

5. The plaintiff's appeal has however succeeded. Vide order dated 01.06.2020, the Additional District Judge, Gurugram has found that Rapat Roznamcha dated 06.07.2019 regarding delivery of possession to defendant No.1 does not bear the signatures of the plaintiff nor does it indicate the person to whom notice was issued regarding possession proceedings through the Halqa Patwari. In view of this evidence as well as the fact that criminal complaint under Section 156(3) Cr.P.C. have been filed against defendant No.1 and others, it has been concluded that order of partition having been obtained by fraud, a prime facie case exists in favour of the plaintiff. Consequently, it has been held that status quo regarding construction be maintained by both sides as the balance of convenience has tilted in favour of the plaintiff and he would suffer irreparable injury if injunction is not granted. The argument regarding non-interference by the Appellate Court with the order of the trial Court has been rejected on the ground that the authorities cited to support the argument are inapplicable on facts.

6. Learned counsel for the petitioner submits that appeal against order of partition is admittedly pending. Thus, the suit is barred by Section 41(h) of the Act. Further, the suit is not maintainable as relief of permanent injunction and mandatory injunction cannot be sought in the same suit. Still further, the order of the trial Court was a well considered and reasoned order and the Appellate Court should not have interfered therewith simply because another view was possible on reconsideration of the case. Moreover, defendant No.1 having obtained possession on 06.07.2019, could

CR No.1932 of 2020

not have been injuncted as on the date of filing of the suit, the plaintiff was neither owner nor in possession of the suit property.

7. The argument of learned counsel for petitioner-defendant No.1 regarding suit being barred by Section 41(h) of the Act and it being not maintainable as relief of permanent injunction and mandatory injunction cannot be claimed in the same suit, are being taken up first.

8. Section 41(h) of the Act bars the grant of injunction in case any other equally efficacious remedy is available in law. This provision is placed in Chapter VIII of the said Act relating to grant of 'perpetual injunctions'. Such injunctions are granted only at the time of final decision of a suit and thus, Section 41(h) of the Act cannot come into play at the time of grant of temporary injunction. The petitioner-defendant No.1 is aware of this law because he has not argued the bar of Section 41(h) of the Act while opposing the application for grant of temporary injunction. Moreover, no application under Order VII Rule 11 of CPC has been filed for rejection of the plaint on the ground that the suit is barred by law. Consequently, the argument deserves to be rejected not only on merits but also because no new ground can be raised at the revisional stage.

9. The objection regarding prayer of mandatory injunction and permanent injunction being unavailable in the same suit is being considered only to be rejected. The argument is illogical to say the least. If a defendant has illegally occupied the property of a plaintiff and is raising construction thereupon mandatory injunction can definitely be sought to direct him to remove the construction already raised and permanent injunction can be sought to restrain him from raising construction.

10. The Appellate Court has found as a matter of fact that prima

CR No.1932 of 2020

facie it appears that the order of partition and Rapat dated 06.07.2019 regarding possession have been obtained fraudulently. Appeal is pending against ex parte order of partition dated 18.06.2019. Under the circumstances, a party can surely seek to restrain a defendant from raising any further construction. The fact that defendant No.1 sought partition undoubtedly implies that the plaintiff is a co-sharer. A co-sharer in exclusive possession cannot be dispossessed except by way of legal and valid partition. The validity of the order of partition is under challenge in appeal and meanwhile, plaintiff-respondent No.1 can certainly protect infringement of his legal rights through an order of temporary injunction. The Appellate Court was thus justified in finding a prima facie case in favour of the plaintiff-respondent No.1.

11. Learned counsel for the petitioner has laid great stress on the fact that possession having been handed over on 06.07.2019, no injunction could have been granted as on the date of suit, defendant No.1 was the owner as well as in possession of the suit land. Reliance has been placed upon ***Balkrishna Dattatraya Galande vs. Balkrishna Rambharose Gupta and Another, 2019(1) RCR (Civil) 978 and Devinder Singh vs. Darshan Singh, 2007(2) PLR 823.***

12. The aforementioned argument would have had some merit if defendant No.1 had been restrained from interfering in the possession of the plaintiff. The Appellate Court has directed the parties to maintain status quo regarding construction and this can certainly be done in view of the facts and circumstances of this case. Title of defendant No.1 is under challenge in appeal and during its pendency, the defendant can certainly be restrained from raising any further construction. The judgment in

CR No.1932 of 2020

Balkrishna Dattatraya Galande (supra) is not applicable as the said judgment has been passed in a case where a suit for injunction had been finally decided. On appreciation of evidence it had been found that the plaintiff was not in possession of the suit property and thus, no injunction could be granted in his favour. The case of ***Devinder Singh (supra)*** is also distinguishable as in the said case partition had been done lawfully and there was no allegation that fraud had been practiced.

13. The final submission of learned counsel for the petitioner is that the order of the trial Court was a well reasoned order and the Appellate Court should not have interfered therewith merely because a different view was possible. Reliance has been placed upon ***Skyline Education Institute (India) Private Ltd. Vs. S.L. Vaswani and another, 2010(1) RCR (Civil) 581***. This proposition of law is settled and there is no quarrel therewith. However, the question arises whether the order of the trial Court was well considered and supported by cogent reasons? A perusal of the order dated 15.05.2020 reveals that the same is perfunctory to say the least. The trial Court has based its order only upon the fact that the plaintiff was unable to establish the ancestral nature of the property or his possession. It failed to take into consideration the fact that defendant No.1 himself had sought partition of the suit property which implies that the plaintiff was a co-sharer therein. The Rapat Raoznamcha dated 06.07.2019 produced by defendant No.1 established the previous possession of the plaintiff but the trial Court has ignored this aspect. Consequently, the Appellate Court was justified in reconsidering the matter.

14. Prima facie case having been established, the Appellate Court was justified granting an order of status quo regarding construction as the

CR No.1932 of 2020

pleading of fraud tilted the balance of convenience in favour of the plaintiff. In case, defendant No.1 was not restrained from carrying on further construction, irreparable loss would have resulted to the plaintiff in the event of the order of partition being set aside. All the requirements for grant of temporary injunction stand fulfilled.

15. In conclusion, I deem it my duty to make reference two other judgments relied upon by learned counsel for the petitioner. One of them is judgment dated 09.07.1998, passed in RSA No.1195 of 1997 titled as ***Rawat Ram vs. Havita Shree***. In this case, it has been held that where the jurisdiction of civil Courts is barred and revenue Courts have validly exercised jurisdiction, the plaint should be ordered to be rejected and not merely returned. I do not see how this judgment is applicable in the factual matrix of this case. The other judgment is dated 02.12.2009 passed in Civil Appeal Nos.7966-7967 of 2009 titled as ***Kashi Math Samsthan and another vs. Srimad Sudhindra Thirtha Swamy and another*** where the Hon'ble Supreme Court has held that the Courts would not examine balance of convenience and irreparable injury unless prima facie case has been established in favour of the plaintiff. This judgment is also not applicable as I have found that the plaintiff has succeeded in establishing a prima facie case.

16. For the aforementioned reasons, I do not find any merit in the revision petition. The same is dismissed.

(SUDHIR MITTAL)
JUDGE

July 02, 2020
Ankur

Whether speaking/reasoned	Yes
Whether Reportable	Yes