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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 2068 of 2020

Date of decision: 30.09.2020

Satish Kumar Arya

..... Petitioner

V/s.

Haryana Wakf Board and another

..... Respondents

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. P.S. Jammu, Advocate, for the petitioner.

Mr. Ghulam Nabi Malik, Advocate, for respondent No.1.

Mr. Devender Kumar, Advocate, for respondent No.2.

Sanjay Kumar, J.

The petitioner is the plaintiff in CS/1220/2019 on the file of the learned Civil Judge (Junior Division), Faridabad. He filed the said suit against the Haryana Wakf Board (for short, 'the Board'), the first respondent herein, for a permanent injunction restraining it from interfering with his peaceful possession over the suit property and from leasing/transferring the said suit property to anyone in any manner whatsoever. He also sought a mandatory injunction to the Board to cancel the lease deed, if executed in favour of anyone in respect of the suit property, and to direct it to renew his lease for a further period and to accept the requisite lease fee/payment from him.

The petitioner/plaintiff filed an interlocutory application in the suit seeking an interim injunction restraining the Board from interfering with his peaceful possession over the suit property and to restrain it from leasing/

transferring the physical possession thereof to anyone in any manner whatsoever.

The suit property is a plot admeasuring 1000 sq. yards, forming part of Khasra No.49/16, 25, 15/2 and 62/5/1 situated within the revenue estate of Village Gaunchhi, Sub-Tehsil Gaunchhi, District Faridabad. This plot admittedly belongs to the Board and was leased out to the petitioner-plaintiff in the year 2004. It is in relation to this leased plot that the petitioner-plaintiff sought the aforestated main reliefs and interim reliefs before the trial Court.

However, by order dated 28.03.2019, the trial Court dismissed the application filed by the petitioner-plaintiff for an interim injunction. Therein, the trial Court noted the stand of the Board that it had already leased the suit property to a third party, one Gyanender Tewatia, the second respondent herein, after following the requirements of the Haryana Wakf Act. The Board placed before the trial Court the notice issued by it inviting bids *qua* the suit property, whereby the subsequent lease was awarded to Gyanender Tewatia. The intimation letter dated 13.02.2019 given to the petitioner-plaintiff informing him of this action was also placed on record. The trial Court noted that the petitioner-plaintiff could not establish his possession over the suit property after 13.02.2019 and accordingly denied him an interim injunction.

The validity of this order was tested in appeal by the petitioner-plaintiff before the learned Additional District Judge, Faridabad, in CMA/85/2019. However, the appellate Court dismissed the said appeal on 29.07.2019, confirming the order passed by the trial Court. It appears that the petitioner-plaintiff impleaded the new lessee, Gyanender Tewatia, before the appellate Court directly without taking steps to implead him in the suit. The

appellate Court found fault with this procedure. Further, the appellate Court noted that there was no illegality or irregularity in the order passed by the trial Court, warranting interference in the appeal. The appeal was accordingly dismissed with costs.

Though Mr. P.S. Jammu, learned counsel for the petitioner-plaintiff, would argue that both the Courts erred in refusing interim relief to his client pending the suit, he fairly concedes that there is no available proof of the petitioner-plaintiff being in possession of the suit property as on the date of institution of the suit. This would be the *sine qua non* for the petitioner-plaintiff to even claim that he has a *prima facie* case. In the absence of any evidence of the petitioner-plaintiff being in possession of the suit property as on the date of institution of the suit, he would not be entitled to an interim injunction for protecting such possession.

This Court therefore finds no error having been committed by either of the Courts in denying him such interim relief. That apart, as rightly pointed out by Mr. Ghulam Nabi Malik, learned counsel for the Board, the very maintainability of the suit before the trial Court requires examination in the light of the mandatory provisions of Section 85 of the Haryana Wakf Act. The trial Court would therefore have to be mindful of this aspect.

Subject to the above observation, the revision is dismissed.

However, in the circumstances, there shall no order as to costs.

(SANJAY KUMAR)
JUDGE

30.09.2020

rakesh

whether speaking/non speaking

: Yes/no

whether reportable/non reportable

: Yes/no