

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

112

CR-2282-2020

Decided on : 21.09.2020

Satish Kumar & another

... Petitioners

Versus

Nihal Singh & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.Ajay Jain, Advocate, for the petitioners.

(The proceedings are being conducted through video conferencing,
as per instructions.)

G.S. Sandhawalia, J. (Oral)

Challenge in the present revision petition, filed under Article 227 of the Constitution of India, is to the order dated 10.08.2020 (Annexure P-6) passed by the Addl.Civil Judge (Sr.Divn.), Rewari, whereby the application for early hearing of the suit and to pass orders on the application under Order 39 Rules 1 & 2 CPC has been ordered to be dismissed.

Counsel for the petitioners has vehemently argued that the matter has been adjourned to 12.01.2021, which is not justified. It is submitted that the Court has wrongly come to the conclusion that the relief claimed in the suit is different than the one in the application under Order 39 Rules 1 & 2 CPC. Therefore, the finding that the plaintiffs cannot deviate from the relief claimed in the earlier application which has been filed along with the suit is without any basis. It is further submitted that the defendants are demolishing the shops in the premises in question and therefore, the impugned order is not justified, in the facts and circumstances.

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A perusal of the suit filed by the plaintiff-petitioners for declaration, permanent injunction and for rendition of accounts under Section 92 CPC would go on to show that the dispute revolves around the temple of Maa Durga which has been shown in the site-plan which has been constructed in Village Jarthal. A Samiti had been constituted known as the Jai Ambey Sewa Samiti under the provisions of Haryana Cooperative Societies Act. The Executive Committee of 39 members also had been established and donation was being collected on account of the number of devotees visiting the temple. The office bearers are stated to be not watching the interest of the Society and they were stated to be misappropriating and usurping the amount. Resultantly, the Trust Deed was sought to be declared null and void and directions were sought to restrain the defendants from interfering in the worship and to give the rendition of account of the donation amount.

As per the case of the plaintiffs themselves, defendant No.1, Nihal Singh had also filed a suit for permanent injunction along with 4 others titled as Jai Ambey Sewa Trust Vs. Subhash Chauhan etc. which was also pending before the Civil Judge (Jr.Divn.).

The present suit was adjourned on 18.01.2020 to 07.04.2020 for filing of the written statement, upon appearance of defendant No.2 and fresh notice was issued to defendants No.1 & 3. It is stated that defendant No.3 was trying to take advantage of the COVID-2019 situation due to which the subsequent application was filed under Order 39 Rules 1 & 2 that defendants were raising further construction in the suit property and they were also wanting to demolish the 3 shops which are adjacent to the Dharamshala of the

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Samiti. Allegations have been made that family members of defendant No.1 have no right or title in the property and therefore, the nature of the whole property should not be changed.

It is, in such circumstances, the Trial Court has rightly come to the conclusion that the injunction qua the demolition of the property is now being prayed for.

The pleadings have already been noticed and the cause of action regarding the challenge to the Trust and the defendants who admittedly are also in possession of the premises in question. The dispute is regarding the amount of donations which have been received by the Samiti. Admittedly, the defendants are already in possession as per the pleadings itself and thus, in the considered opinion of this Court, the Trial Court was justified as there is no prima facie balance of convenience in favour of the petitioners as they are not even in possession of the property. Thus, irreparable loss would be caused to the defendants in case the injunction is to be allowed. At a subsequent point of time if the rendition of account is to be done, the defendants will have to fall in line with the judgment and decree which may be passed against them. Accordingly, this Court is of the opinion that the order declining the application for early hearing is not suffering from any illegality or irregularity which would warrant interference under the supervisory jurisdiction of this Court.

Resultantly, in view of the above discussion, the present revision petition is dismissed in limine. Needless to say any observations made above are only for the purpose of deciding the present petition and this Court has not

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commented upon the merits of the case, as admittedly the pleadings have not
been completed.

SEPTEMBER 21, 2020 (G.S. SANDHAWALIA)
sailesh JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No