

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.157 of 2021(O&M)
Date of Order: 17.02.2021

Gurdev Singh

..Petitioner

Versus

Manju Bala and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Onkar Rai, Advocate,
for the petitioner.

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The plaintiff-petitioner has invoked the supervisory jurisdiction of this court under Article 227 of the Constitution of India, for setting aside of the order dated 14.01.2021 passed by the first appellate court while reversing the order passed by the Civil Judge (Junior Division) on 28.08.2020.

Some facts are required to be noticed.

It is the case of the plaintiff that 3 brothers, namely, Gurdev Singh, Baldev Singh and Vikram Singh, jointly purchased 40 kanals 6 marlas land in village Rurka, Tehsil and District Ludhiana. Vikram Singh died and his share was inherited by his widow-Gurmail Kaur and his sons Avtar Singh, Jagtar Singh and Jasbir Singh, respectively. Avtar Singh also died leaving behind his widow Bhinder Kaur, son-Jagraj Singh and daughter-Dalvir Kaur. The aforesaid Bhinder Kaur, Jagraj Singh and Dalbir Kaur have sold the land in dispute to defendant no.4 vide registered sale

deed dated 09.12.2019. Defendant no.4 after taking permission from the authorities has started installing a fuel station.

At this stage, the plaintiff-Gurdev Singh filed a suit for declaration to the effect that the property is still joint and therefore, sale of land measuring 2 kanals 10 marlas vide registered sale deed dated 09.12.2019 is null and void. Along with the suit, an application for grant of temporary injunction was filed seeking to restrain defendant no.4 and 5 from raising any construction or digging the specific portion required for storage of petrol/diesel tanks.

Learned trial court granted injunction vide order dated 28.08.2020. However, in appeal, the learned first appellate court has set aside the same while observing that the plaintiff has failed to make out prima-facie case in his favour.

This court has heard learned counsel for the petitioner and with his able assistance perused the paper book.

Learned counsel for the petitioner contends that an application under Order 39 Rule 4 CPC for the vacation of order of injunction is pending before the trial Court and therefore, no appeal could be filed. He further submits that the defendants have already withdrawn the compensation for compulsory acquisition of some part of land deposited by the Gas Authority of India Limited and therefore, the first appellate court has erred in accepting the appeal.

This court has considered the submissions of learned counsel, however, find no substance therein.

It is not in dispute that defendant no.4 is a purchaser for valuable consideration. It is the stand of the defendants that the land has

already been partitioned between the family members. It has also come on record that the land in dispute is now in commercial area. Still further, the plaintiff has pleaded that the defendant no.1 to 3, 6 and 7 received the compensation for compulsory acquisition of the land by Gas Authority of India Limited. If the land as alleged by the plaintiff, was still joint, he would have also claimed share in the compensation received by the aforesaid defendants.

The plaintiff is still to prove that the land continues to be joint. Even if, for the argument sake, it is accepted that the land is continues to be the joint property, a co-owner is entitled to sell his share. As notice above, defendant no.4 is a purchaser for valuable consideration, therefore, there is no equity in favour of the plaintiff.

As regards the argument of learned counsel that the defendant has also filed an application under Order 39 Rule 4 CPC, it may be noticed that the petitioner never objected to the maintainability of the appeal before the first appellate court on this basis. Still further, the learned first appellate court, on appreciation of material, has already passed an order. Further, it is well established that before an injunction is granted under Order 39 Rule 1 and 2 CPC, the plaintiff is required to fulfill three ingredients viz. *Prima-facie* case, balance of convenience in his favour and irreparable loss and injury which he is likely to suffer. In the present case, the plaintiff has failed to fulfill the aforesaid 3 requirements.

Hence, no ground to interfere.

Dismissed.

17th February, 2021

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Whether speaking/reasoned

Whether reportable

(ANIL KSHETARPAL)
JUDGE

: Yes/No

: Yes/No