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

CR-412-2021 (O&M)

DATE OF DECISION: 18.03.2021

Ram Kumar & Ors.

.....Petitioners

Versus

Narayani Devi & Ors.

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Manoj Tanwar, Advocate
for the petitioners.

ALKA SARIN, J. :

Heard through video conferencing.

The present civil revision petition under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 (CPC) has been filed for setting aside the impugned order dated 16.02.2021 (Annexure P-1), whereby the Trial Court has dismissed the application (Annexure P-5) of the plaintiff-petitioners filed under Order 39 Rules 1 and 2 CPC for grant of interim injunction.

The facts in brief are that in 2014 the plaintiff-petitioners filed a civil suit (CS. No.220, ID No.CS-1671-2014) for possession by way of partition of land measuring 5 Kanals 2 Marlas situated in Village Kabarcha, Tehsil Narwana, District Jind. The present defendant-respondents were

defendant Nos.40, 41 and 42 in this suit. Vide judgement dated 28.08.2018 (Annexure P-2) the Trial Court passed a preliminary decree in favour of the plaintiff-petitioners holding that *“the plaintiffs are owner of the suit property measuring 5 Kanal 2 Marlas, fully described above, to the extent of 29/102 share and the plaintiffs are entitled to separate possession of their share by partition of suit property by metes and bounds. The parties to the suit are directed to get the suit property partitioned as per their shares mutually within three months, failing which any of the parties can approach the court for partition of the suit property by metes and bounds”*. The present defendant-respondents, who were defendant Nos.40, 41 and 42 in the said civil suit (CS. No.220, ID No.CS-1671-2014) challenged the decision of the Trial Court by filing an appeal (CA-329-2018) which appeal is still pending before the Additional District Judge, Jind.

On 14.01.2020 the plaintiff-petitioners filed the present civil suit (CS-34-2020) for grant of permanent injunction restraining the defendants from making construction over the joint land Khasra No.326(1-11) gair mumkin abadi entered in k/k No.118/122 and Mustil and Killa No.446(1-9) gair mumkin abadi, 458/13(0-6) gair mumkin ruri 473/15(0-6) gair mumkin ruri entered in k/k No.116/120 and Khasra No.345/1(1-10) gair mumkin abadi entered in k/k No.117/121 according to jamabandi for the year 2018-19 situated in Village Kabarcha, Tehsil Uchana, District Jind forcibly and illegally and without getting its final partition and to change the nature of the suit land in any manner now or in future. The respondents are the defendants in this civil suit. Alongwith the plaint (Annexure P-3), an application (Annexure P-5) under Order 39 Rules 1 and 2 CPC and Section 151 CPC was filed for grant of temporary injunction restraining the

defendant-respondents from making construction over the suit land forcibly and illegally and without getting or till its partition and to change the nature of the suit land in any manner till the decision of the civil suit. On 14.01.2020 the Trial Court issued notice to the defendant-respondents for 21.01.2020. The defendant-respondents put in appearance on 21.01.2020 when the Trial Court ordered maintenance of status quo regarding construction (Annexure P-6). The defendant-respondents filed their written statement (Annexure P-7) and contested the civil suit. Vide impugned order dated 16.02.2021 (Annexure P-1) the Trial Court dismissed the application (Annexure P-5) filed by the plaintiff-petitioners under Order 39 Rules 1 and 2 CPC and Section 151 CPC for grant of temporary injunction. Hence, the present civil revision petition under Article 227 of the Constitution of India read with Section 151 CPC for setting aside the impugned order dated 16.02.2021 (Annexure P-1).

The present civil revision petition has been filed against an order passed by the Trial Court on an application under Order 39 Rules 1 and 2 CPC. Such an order is appealable under Order 43 Rule 1(r) CPC. No justifiable reasons have been advanced by the learned counsel for the plaintiff-petitioners as to how the present civil revision petition under Article 227 of the Constitution of India was maintainable when there is an alternative remedy of appeal available to him under Order 43 Rule 1(r) CPC. The Registry had also raised this objection when the present civil revision petition was filed to which learned counsel for the plaintiff-petitioners had replied that it be *“put up as it is before Hon’ble Bench”*.

Learned counsel for the plaintiff-petitioners has argued that since the Trial Court had in the earlier civil suit (CS. No.220, ID No.CS-

1671-2014) passed a preliminary decree in favour of the plaintiff-petitioners holding that they are owners of the suit land to the extent of 29/102 share and are entitled to separate possession of their share, the Trial Court in the present civil suit ought to have restrained the defendant-respondents from raising any construction on the suit land. Learned counsel has placed reliance on the decision in '**T. Lakshmipati & Ors. vs. P. Nithyananda Reddy & Ors.**' [2003(3) RCR (Civ.) 305]. Further, according to counsel for the plaintiff-petitioners, the Trial Court had failed to exercise jurisdiction which it has and thus caused failure of justice and, therefore, this Court can interfere under Article 227 of the Constitution of India to exercise its supervisory jurisdiction.

Without commenting on the merits of the case, this Court is satisfied that the present civil revision petition under Article 227 of the Constitution of India against the impugned order dated 16.02.2021 (Annexure P-1) is not maintainable. Before this Court can exercise its jurisdiction under Article 227 of the Constitution of India in a matter pertaining to the civil court, it needs to be satisfied that an error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and that grave injustice or gross failure of justice has been caused. The supervisory jurisdiction is to be exercised sparingly and only in appropriate cases where the judicial conscience of the Court dictates it to act lest a gross failure of justice or grave injustice should occasion. The scope of interference by this Court under Article 227 of India is restricted when an alternate remedy of appeal is available. The power of superintendence is to be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within the

bounds of their authority and not for correcting mere errors of fact which only a superior court can do in exercise of its statutory power as the court of appeal. The High Court cannot, in exercise of its jurisdiction under Article 227 of the Constitution of India, convert itself into a Court of appeal. The arguments raised by the counsel for the plaintiff-petitioners before this Court can very well be raised in an appeal before the Appellate Court. The impugned order (Annexure P-1) was not passed ex-parte or behind the back of the plaintiff-petitioners and in fact was passed after the defendant-respondents had filed their written statement.

In the case of **‘Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. vs. Tuticorin Educational Society & Ors.’** [(2019) 9 SCC 538] the Supreme Court *inter-alia* held that :

“11. Secondly, the High Court ought to have seen that when a remedy of appeal under Section 104(1)(i) read with Order 43, Rule 1(r) of the Code of Civil Procedure, 1908, was directly available, Respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In A. Venkatasubbiah Naidu v. S. Chellappan [A. Venkatasubbiah Naidu v. S. Chellappan, (2000) 7 SCC 695], this Court held that “though no hurdle can be put against the exercise of the constitutional powers of the High Court, it is a well-recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a constitutional remedy”.

12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before civil courts in terms of the provisions of Code of Civil Procedure, and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules

and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which Respondents 1 and 2 invoked the jurisdiction of the High Court. This is why, a 3-member Bench of this Court, while overruling the decision in Surya Dev Rai v. Ram Chander Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] , pointed out in Radhey Shyam v. Chhabi Nath [Radhey Shyam v. Chhabi Nath, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67] that “orders of civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts”.

13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself”.

This Court does not find the present case fit for it to exercise jurisdiction under Article 227 of the Constitution of India more so when the plaintiff-petitioners have an alternate remedy available to them under Order 43 Rule 1(r) CPC of filing an appeal against the impugned order dated 16.02.2021 (Annexure P-1) passed on an application under Order 39 Rules 1

and 2 CPC. The judgement cited by counsel for the petitioner has no bearing on the maintainability of the present civil revision petition.

The present civil revision petition under Article 227 of the Constitution of India read with Section 151 CPC is held to be not maintainable and is dismissed as such.

Dismissed.

(ALKA SARIN)
JUDGE

18.03.2021
Yogesh Sharma

NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO