

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

115

CR No.973 of 2021

Decided on: 23.04.2021

Virender Kumar Jain

... Petitioner

Versus

Bakshi Ram

... Respondent

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

Present: Mr. Balvinder Sangwan, Advocate for the petitioner.

(The proceedings have been conducted through video conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

In the present revision petition filed under Article 227 of the Constitution of India, the petitioner-plaintiff challenges the order dated 12.12.2016 passed by the learned Civil Judge (Junior Division), Faridabad, whereby the injunction application under Order 39 Rule 1 & 2 CPC has been dismissed. Challenge has also been raised to the order dated 09.12.2019 passed by the Additional District Judge, Faridabad, whereby the said order has been upheld in appeal.

2. Counsel has vehemently argued that since the petitioner was a tenant as such in the property in question on the basis of a rent agreement dated 19.11.2009 (Annexure P-2), therefore, the injunction should have been granted as such and the findings of the Courts below, especially that of the lower Appellate Court as such would prejudice the final hearing of the case.

3. A perusal of the paper-book would go on to show that the suit was based on the allegations of the petitioner-plaintiff that he was in possession of tin shed area measuring 20'x80' situated in village Ankhir,

Tehsil & District Faridabad and on the eastern side of which a road as such was situated, as per the site plan (Annexure P-3). The said area had been depicted in red and shown as ABCD. The same was stated to be as per the rent agreement as noticed earlier and it is the case of the petitioner-plaintiff that since the defendant had induced him that he was raising the Pucca construction on the said portion and the plaintiff had started to keep his goods on the remaining portion of the property. Thereafter, when the construction has been raised he was not put back in possession and on the said basis the suit has, thus, been filed.

4. The defence of the respondent-defendant on the other hand was that the plaintiff was running the shop in the name & style of M/s Jain Timber at a distance of 100 feet from the disputed plot and the address was shown at Badkhal Ankhir Road, Faridabad. The shop was shown in orange colour in the site plan annexed with the written statement. It was stated that the plot which was subject matter of dispute was of Omwati wife of Syam Lal and was in a shape of duly constructed hall shown in yellow colour, as per the said site plan attached. The rent agreement was contested on the ground that it was for a period of 3 years and was not registered. It was also submitted that nothing as such was placed on record by the plaintiff containing the Killa nos. and shop no. of the alleged property and thus the dispute had arisen as to which portion the plaintiff as such was in possession.

5. The trial Court came to the conclusion that since the plaintiff in his personal examination had admitted that he was in possession of

property depicted in orange colour in the site plan and keeping in view the report of the Local Commissioner that no material/Timber wood had been found in the suit property, the injunction was declined. This aspect as such has been objected by the counsel for the petitioner that the said statement cannot be as such treated against the petitioner.

6. In appeal, the lower Appellate Court had noticed the report of the Local Commissioner showing the property measured 48'x74' and not 20'x80' and, therefore, there was a dispute as such as to which portion of land the petitioner is in possession.

7. This Court has also examined the said site plan on record and thus it would be clear that both the properties as such abut the same road. It would be a matter of evidence as to whether the petitioner is in possession of property measuring 20'x80' as shown in the site plan as ABCD as contested by him or whether he is possession of the property, which has been shown in Orange colour in the site plan produced by the defendant. It is, thus, a matter of evidence as such which has to be led and proved before the trial Court and in absence of any material record having been produced before the Courts below the injunction has been declined. In such circumstances, the injunction which has been denied cannot be said without any basis as such, as the basic ingredients for grant of injunction were not made out.

8. Needless to say that any observations which has been made by the lower Appellate Court while dismissing the appeal of the petitioner-plaintiff would not prejudice the trial Court at the final stage of

hearing, since the evidence has to be led and on that basis the trial Court would come to the conclusion that as to which portion was in possession of the plaintiff, since the rent agreement also talks about the road on the eastern side.

9. Resultantly, this Court is of the opinion that no case as such is made out for interference in the findings as recorded by the Courts below. The present revision petition is accordingly dismissed with the abovesaid observations.

April 23, 2021
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No