

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

Sr. No.117+212

**CM-379-CII-2021 in/and
CR No.1978 of 2020**

MOHAMMAD ASHRAF

..PETITIONER

VERSUS

MOHD. RAZAK

...RESPONDENT

2.

CR No.1980 of 2020

MOHAMMAD ASHRAF

..PETITIONER

VERSUS

MOHD. RAZAK

...RESPONDENT

DATE OF DECISION: January 18, 2021

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Anil Kumar Garg, Advocate, for the petitioner.

Mr. J.S. Mehndiratta, Advocate, for the respondent.

SUDHIR MITTAL, J. (ORAL)

CM-379-CII-2021 in CR-1978-2020

This application has been filed for placing on record Annexure
R-1 to R-5 and for exemption from filing certified copies thereof.

Notice of motion.

CR Nos.1978 & 1980 of 2020

Mr. Anil Kumar Garg, Advocate accepts notice and has no objection in case the same is allowed.

Application is allowed and exemption sought for is granted and Annexures R-1 to R-5 are taken on record.

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This common order and judgment shall dispose of aforementioned two revision petitions as both arise out of orders dated 10.02.2020 (Annexure P-6) and 22.01.2019 (Annexure P-4) passed in connected cases.

The petitioner is the plaintiff. He had filed a suit for permanent prohibitory injunction restraining the defendant from dispossessing him from the suit property. It is his case that he is the tenant on an open piece of land enclosed by a boundary wall. In the written statement filed on behalf of respondent, tenancy has been denied. Counter claim has been filed by the defendant wherein he has also set up a claim of possession of the property in dispute and restraint has been sought against the plaintiff. Along with the suit as well as counter claim, applications under Order 39 Rules 1 & 2 CPC have been filed for grant of ad interim injunction. The application of the plaintiff-petitioner has been dismissed whereas the application of defendant-respondent has been allowed by the trial Court. Appeal of the plaintiff-petitioner has been dismissed.

Learned counsel for the petitioner has argued that in the written statement dated 08.01.2019 annexed as Annexure P-2, the defendant-respondent has specifically pleaded that the sand, crusher etc. are lying in the property in dispute. This shows that the plaintiff is in possession of the

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suit property as the defendant does not deal in the business of selling sand and crusher etc. Thus, prima facie case exists in favour of the plaintiff-petitioner and the Courts below have erred in rejecting his application.

Learned counsel for the respondent supports the reasons given by the courts below.

The trial Court has rejected the application of the plaintiff-petitioner on the ground that his case is based on oral evidence only whereas the case of the defendant-respondent is based on documentary evidence i.e. sale deed dated 07.07.2009. In the absence of any proof of possession on behalf of the plaintiff-petitioner, the trial Court was justified in finding in favour of the defendant-respondent. Possession ordinarily follows title and for success, the plaintiff-petitioner should have produced some evidence to show that he is in possession. However, that being not the case, I do not find any error in the impugned orders.

The present revision petitions are dismissed.

January 18, 2021

Ankur

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No