

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision-1451-2021 (O&M)
Date of decision: - 06.08.2021

Usha

....Petitioner

Versus

Desh Raj Saini and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Randhir S. Hooda, Advocate
for the petitioner.

(Through Video Conferencing)

HARSIMRAN SINGH SETHI, J. (ORAL)

CM-6535-CII-2021

Application is allowed, as prayed for.

Civil Revision-1451-2021

In the present revision petition, the challenge is to the order dated 05.02.2021 (Annexure P-1) passed by the Civil Judge (Junior Division), Sohna, by which, while deciding an application under Order 39 Rules 1 & 2 of the Code of Civil Procedure, filed by the respondent-plaintiff in a suit for specific performance, it has been ordered that status-quo regarding the possession of property be maintained on the ground that both the parties were claiming to be in possession of property on the basis of the documents produced before the Court. The appeal preferred by the petitioner against the order dated 05.02.2021 (P-1) has been

rejected by the lower Appellate Court

In the present revision petition, the grievance which is being raised by the petitioner is that once she already has a sale deed dated 11.12.2020 in her favour and as per the sale deed, she was allowed the possession by the seller i.e. defendant No.1, the order of maintaining the status-quo qua the possession of the property should not have been passed and clear finding should have been recorded in her favour qua possession of the property in dispute.

On being asked by this Court that how the order passed by the Courts below for maintaining the status-quo qua the possession of the property is causing prejudice to the petitioner, learned counsel for the petitioner submits that petitioner intends to raise the construction on the said property. On being asked further, whether the said prayer of the petitioner has been rejected by the Courts below on an application specifically filed for the said relief, learned counsel for the petitioner submits that no such specific application was filed by the petitioner in this regard, but in the appeal preferred, the petitioner had raised the said grievance. On being asked to point out where the said ground was raised before the appellate Court, nothing was pointed out from the impugned order passed by the lower appellate Court that any such prayer was ever raised by the petitioner for consideration of either of the Courts below. Therefore, the ground which is being raised now before this Court for challenging the order passed by the Courts below regarding the maintaining of status-quo qua the possession of property, cannot be considered.

It may be noticed here that the orders passed by the Courts below are detailed, wherein, it has been noticed that the plaintiff-respondent No.1 admittedly had an agreement to sell, which was entered into between the plaintiff and respondent herein on 14.07.2015 and according to the said agreement to sell, after receiving the full amount of consideration of the property in question, the possession of the said property was delivered to respondent No.1-plaintiff. It is only in the year 2020 that defendant No.2 sold the property to the petitioner and the petitioner is also claiming that the possession was delivered to her by respondent No.2.

Learned counsel for the petitioner concedes that even as of now the original sale deed of the said property is with the plaintiff-respondent No.1, which according to respondent No.1-plaintiff, was given to him by the owner i.e. respondent No.2 at the time of entering into the agreement to sell dated 14.07.2015 and that too after receiving full and final payment as agreed in Agreement to Sell dated 14.07.2015.

Learned counsel for the petitioner further concedes that a counter claim has also been raised by the petitioner claiming Rs.60 lakhs with interest from the respondent. On being asked that once the petitioner already has a sale deed and the possession in her favour of the property in question then why counter claim has been filed by the petitioner. Learned counsel for the petitioner was not able to explain the said aspect. On one hand petitioner is praying that she intends to raise construction on the property in dispute and on the other hand she is claiming back the amount paid by her for the said property. All these facts prima facie show that

there is a dispute qua the possession of the property, which can only be decided on the basis of the evidence, which will be led by the parties during the trial. The question that the petitioner should be allowed to raise construction on the disputed property will mean that a finding is being recorded by this Court that the petitioner is in possession of the same, which, keeping in view the facts narrated hereinbefore, cannot be allowed as the possession is yet to be proved by the parties concerned by leading the evidence.

Keeping in view the above, no ground is made out to interfere with the impugned orders and the present revision petition is accordingly dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

August 06, 2021
naresh.k

Whether reasoned/speaking?	Yes
Whether reportable?	No