

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

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CR No.2681 of 2020
DATE OF DECISION : 9TH APRIL, 2021

Amir Singh

.... Petitioner

Versus

Smt. Ranjna

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court

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Present : Mr. Raman Goklaney, Advocate for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

The present petition has been filed under Articles 227 of the Constitution of India challenging order dated 19.11.2020 (Annexure P-1) passed by the lower appellate court, whereby order dated 03.07.2020 (Annexure P-2) passed by the trial court granting interim injunction in favour of the petitioner, has been set aside and the petitioner/plaintiff has been declined the interim order.

It is submitted by the counsel for the petitioner that the trial court had rightly passed the order granting injunction in favour of the petitioner after perusing the documents on record and in view of the fact that the petitioner is shown in cultivating possession as tenant continuously for the past so many years. It is further submitted that the petitioner was very much in possession of the suit land on the date when he filed the suit. At that time the respondent-Ranjna was owner of the suit land. However, thereafter she transferred the land in favour of her son. But the possession of the petitioner was never

disturbed. It is further submitted that the findings recorded by the lower appellate court qua the aspect that the petitioner was not a lawful tenant, could not have been recorded by the lower appellate court. Such a finding can come only after leading of the evidence by the respective parties. It is further submitted that as per the last existing *jamabandi*, the petitioner was shown to be in cultivating possession on *batai* 1/3rd. Hence, the findings recorded by the court below, qua the petitioner not being in possession of the suit property, is factually incorrect.

Notice of motion.

Mr. Rohit Nagpal, Advocate assisting Mr. Akshay Bhan, Senior Advocate, accepts notice on behalf of the respondent.

It is submitted by the counsel for the respondent-defendant that the petitioner was in illegal possession of the suit property earlier. However, in the year 2016 he surrendered the possession. Even the *jamabandi* for the year 2014-2015, upon which the petitioner has relied upon to claim possession being a tenant on 1/3rd *batai*, stands corrected by the competent revenue authorities by passing appropriate orders. The authorities had even conducted spot inspection to verify as to who was in possession of the suit property. Even in the spot inspection the authorities confirmed that it was the respondent who was in possession of the suit property as sole owner of the same. The petitioner even challenged that change/correction of the *jamabandi* for the year 2014-2015 while filing the appeal before the statutory revenue authority. However, even the said appeal has already been dismissed. Therefore, as of today there is nothing to show the cultivating possession of the petitioner on the date when he filed the suit. It is further submitted by the counsel for the respondent that the objection of the petitioner that the

lower appellate court has recorded finding which could have been recorded only after taking evidence from the respective parties, is totally misconceived. It is obvious that the observations of the lower appellate court, which the petitioner is apprehending as findings, are made only for the disposal of the application moved for interim relief. It is further submitted that there is nothing on record or pleaded by the petitioner as to under what agreement of tenancy he entered into the land as a tenant. There is no proof of any payment of any rent by the petitioner for any duration. Undisputedly, the respondent is the owner of the suit property. Hence, the petitioner neither has the *prima facie* case, nor balance of convenience in his favour. Hence, the Court below has rightly allowed the appeal filed by the respondent/defendant and has vacated the interim order passed by the trial court.

I have heard learned counsel for the parties and perused the record.

This court does not find any substance in the argument of the counsel for the petitioner. Once, the competent revenue authorities have taken cognizance of the entries; claimed by the petitioner in his favour qua his tenancy and the payment of rent, and have corrected the same in favour of the respondent, then the petitioner cannot claim to be in lawful tenancy or in possession of the suit property as on the date of filing of the suit or thereafter. This aspect is further clarified by the fact that even the appeal, filed by the petitioner against the order of revenue authority, has been dismissed by the competent statutory appellate authority. Hence, this court does not find any *prima facie* case in favour of the petitioner. this court is also of the considered opinion that the

observations of the court below in that regard are well reasoned and are *prima facie* supported by the documents relating to the suit property.

Although, the counsel for the petitioner has submitted that the lower appellate court has recorded findings qua the petitioner not being a lawful tenant and not being in lawful possession of the suit property, which could have been recorded by the court only after taking evidence and appreciating the same. However, even this argument of the counsel for the petitioner is totally misconceived. It is obvious that the court below was dealing with the order passed in an application for the interim order. Whatever is observed by the lower appellate court, by way of judgment writing skills, is only observation meant for disposal of the application pertaining to the interim relief. That cannot be interpreted to be a final finding recorded by the court below for the purpose of respective rights of the parties. At this stage, only *prima facie* view is to be made by the court to see whether the plaintiff is entitled to interim injunction or not. The court below has made and expressed only a *prima facie* view.

In view of the above, this court does not find any illegality or perversity with the order passed by the courts below. Hence, the present petition is dismissed.

However, it is clarified that nothing observed hereinabove by this court or by the courts below while disposing of the interim proceedings, would affect the merits of the case during the trial, pending before the trial court.

9th APRIL, 2021
'raj'

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>