

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

CR-3066-2021(O&M)

Date of decision:-02.12.2021

Mukhtiar Kaur

...Petitioner

Versus

Harcharan Kaur alias Kamla and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ankur Ghai, Advocate
for the petitioner.

H.S. MADAAN, J.(ORAL)

1. In a civil suit filed by plaintiffs Harcharan Kaur @ Kamla and her son Balkar Singh, resident of Kirpal Nagar, Ludhiana against defendant Mukhtiar Kaur, a resident of that very area, defendant Mukhtiar Kaur on appearance had filed counter-claim moving an application under Order 39 Rules 1 & 2 CPC for grant of ad interim injunction restraining the plaintiffs/respondents from recovering the rent from the tenants inducted in the suit property and depositing the same in the Court and also for directing the plaintiffs to furnish the details of such tenants, their

names, addresses and rent being received from them. The defendant/counter-claimant had contested the claim of the plaintiffs that they are owners in possession of the suit property and sale deed bearing document No.8418 dated 28.7.2008 is illegal, null and void and rather craved for grant of mandatory injunction directing the plaintiffs to vacate the suit property besides asking for mesne profits from the plaintiffs. She had based her claim on sale deed dated 28.7.2008 executed by late Sh.Gurdev Singh predecessor-in-interest of the plaintiffs in her favour contending that at request of Sh.Gurdev Singh, she had allowed him to stay in the property for few days but thereafter he died. The plaintiffs were permitted to stay in the suit property for some days but instead of vacating the same, they illegally inducted the tenants in the property and thereafter filed the suit for grant of permanent injunction against the defendant.

2. The counter-claim and the application for ad interim injunction were opposed by the plaintiffs.

3. After hearing arguments, the trial Court of Civil Judge (Jr.Divn.), Ludhiana vide order dated 28.4.2016 dismissed the application.

For ready reference, the operative part of the order is as under:

6. *After hearing the learned counsel for both the parties and after perusing the record, I am of the view that it is admitted fact that plaintiffs are in possession of the suit property. It is further admitted that tenants have been inducted in the suit property by the plaintiffs. The plaintiffs are claiming the suit property and are claiming that the above said sale deed is a forged document. On the other hand the defendant has filed the counter claim for mandatory*

injunction to hand over the vacant possession of the suit property to the defendant and for further mesne profits for the same suit property. When the defendant has filed the counter claim for mesne profits therefore no irreparable loss is going to be suffered to the defendant on paying the rent by the tenants to the plaintiffs. If the counter claim of defendant is decreed, she shall be entitled to all the mesne profits for use of the suit property by the plaintiffs. Therefore no prima facie case is made out in favour of the defendant and no irreparable loss is going to be suffered by the defendant. Moreover no balance of convenience lies in favour of the defendant and the present application requires dismissal.

4. Feeling aggrieved by the said order, the defendant/counter-claimant had preferred an appeal before District Judge, Ludhiana, which was assigned to Additional District Judge, Ludhiana, who had dismissed the same vide order dated 27.10.2021. The operative part of that is being as under:

9) It is well settled that for the grant of interim injunction, the three ingredients prima-facie case, balance of convenience and irreparable loss and injury must co-exist in favour of the applicant seeking injunction. The appellant has sought injunction that respondents/plaintiffs should be restrained from recovering the rent from the tenants, it should be deposited in the Court and to direct the respondents/plaintiffs to furnish the detail of all the tenants. Although the sale deed is there in favour of the appellant at this stage, however the same has been impugned by the respondents/plaintiffs vide instant suit but this Court is of the view that however prima-facie case is there in favour of the appellant but balance of convenience and irreparable loss and injury, which

cannot be compensated in monetary terms, two other ingredients are not in favour of the appellant. The appellant is yet to establish her case on the record and in case, her counter claim is decreed, appellant would become entitled for mesne profits. The loss is not such which cannot be compensated in monetary terms and at a belated stage, could be very well quantified. As such, the appellant would not suffer any irreparable loss and injury, which cannot be compensated in monetary terms whereas the respondents being in possession, have balance of convenience in their favour.

10) In view of the above discussion, all the three ingredients prima-facie case, balance of convenience and irreparable loss and injury which cannot be compensated in monetary terms, do not co-exist in favour of the appellant and she certainly was not entitled for the injunction as prayed for. Learned Trial Court thus has rightly dismissed the injunction application filed by the appellant.

11) In view of above discussion the impugned order does not suffer from any infirmity and does not require any interference and is affirmed and the appeal having no merits is hereby dismissed with no order as to costs. Ld. Trial Court record along with copy of judgment be sent back and appeal file be consigned to the record room.

5. Feeling dissatisfied with both the orders passed against her, the defendant/counter-claimant has knocked at the door of this Court by way of filing the present civil revision petition.

6. I have heard learned counsel for the revisionist besides going through the record and I find that the revision petition is absolutely without any merit and deserves to be dismissed.

7. Both the Courts below have found that the necessary ingredients for grant of ad interim injunction are not there especially with

regard to the balance of convenience being in favour of the counter-claimant and her suffering irreparable loss or injury in case ad interim injunction is not granted to her. The loss, if any, which may be suffered by the defendant can certainly be calculated in terms of money. All the three ingredients required for grant of ad interim injunction i.e. good prima facie case in favour of the applicant, balance of convenience in favour of applicant and applicant suffering irreparable loss or injury in case ad interim injunction is not granted, which are required to be established conjunctively, are not found to be there.

8. Learned Additional District Judge, Ludhiana in his order had though observed that prima facie case is there in favour of the counter claimant but other two ingredients were missing. Under the circumstances, the discretionary equitable relief of ad interim injunction was rightly declined by the trial Court as well as First Appellate Court.

9. After hearing the rival contentions, I find that law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Courts below or the same are perverse, arbitrary and not otherwise.

10. In the present case, I do not find any such illegality or infirmity with the impugned orders/judgments passed by the Courts below much less apparent on the face of those. The order/judgment are certainly not in violation of settled principles of criminal jurisprudence. I do not see any reason to upset the impugned orders.

11. Thus, finding no merit in the civil revision petition, the same

stands dismissed.

02.12.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No