

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 284 of 2022 (O&M)

Date of Decision: 22.11.2022

Rajender

... Petitioner(s)

Versus

Minor Arpit and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: None for the petitioner(s).

Mr. Ashok Tyagi, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. Defendant No.1, in a suit filed by the plaintiff (respondent No.1 herein) for grant of decree of permanent injunction, is the petitioner herein. He assails the correctness of the order dated 22.12.2021 passed by the Additional Civil Judge (Senior Division), Ganaur, while ordering restoration of the possession to the plaintiff.

2. The relevant facts, in brief, are required to be noticed. The plaintiff (Arpit) filed a suit for grant of decree of permanent injunction claiming that he is owner in possession of the land measuring 14 kanals and 1 marla. The defendants contested the suit.

3. On 11.06.2021, the trial Court ordered the parties to maintain *status quo* with respect to possession. On 25.08.2021, the trial Court granted temporary injunction restraining the defendants from interfering in the possession of the plaintiff. The correctness of the aforesaid order dated

25.08.2021 is the subject matter of challenge in an appeal which has been filed by defendant No.1. Complaining forcible dispossession at the hands of the defendants, the plaintiff filed an application under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) for restoration of possession which was allowed vide impugned order 22.12.2021. It’s correctness has been challenged in the present revision petition.

4. Heard the learned counsel representing the respondent, at length and with their able assistance, perused the paper-book.

5 The learned counsel representing the respondent, while defending the impugned order, contends that once the trial Court has already granted an injunction, the plaintiff is entitled to restoration of possession in case he is dispossessed in violation of the injunction order. He relies upon the judgment rendered by this Court in *Gagandeep Kaur Saini v. Bachitter Saini and Others 2020(2) Law Herald (P&H) 1201*. He further contends that in the copy of the jamabandi and khasra girdawari, the plaintiff is recorded to be in the exclusive possession.

6. This Court has considered the submissions. In the considered view of this Court, the order passed by the trial Court on 22.12.2021, while ordering restoration of the possession, suffers from the following errors:-

- i) The trial Court has not recorded any finding with regard to the manner in which the plaintiff has been dispossessed after he has been granted an injunction.
- ii) No opportunity has been given to the defendants to prove that they were already in possession and continued as such.

- iii) While deciding the application under Order XXXIX Rule 1 and 2 CPC, the Courts only record a *prima facie*, finding. Such finding is based on the impression gathered by the trial Court on the basis of material produced. It is not conclusive and is subject to the final decision in the suit. At the stage of Order XXXIX Rule 1 and 2 CPC, the trial Court is only required to examine as to “Whether the plaintiff has made out a *prima facie* case?” “Whether the balance of convenience lies in his favour and an irreparable loss, is likely to be suffered by the plaintiff if the injunction is not granted?” In these circumstances, the order of injunction is based upon a tentative impression gathered by the Court while deciding an application under Order XXXIX Rule 1 and 2 CPC.
- iv) It is evident that on 11.06.2021, the trial Court had only ordered the maintenance of *status quo*. It is only on 25.08.2021, the trial Court granted an injunction in favour of the plaintiff. The aforesaid order is already challenged before the First Appellate Court. Hence, the order of injunction is also not final.
- v) In these circumstances, the trial Court has erred in ordering restoration of possession without realising the consequences thereof. If the possession is delivered to the plaintiff, the suit for injunction shall stand decided even

before examining the evidence and hearing the arguments. In fact, the plaintiff would be granted the relief by an interim order, though it has not been prayed for in the suit.

7. On a careful reading of the judgment passed in *Gagandeep Kaur Saini's case (supra)*, it is evident that attention of the Court was not drawn to the aforesaid reasons. In the facts of the case, the First Appellate Court upheld the order passed by the trial Court. Hence, the judgment passed in *Gagandeep Kaur Saini's case (supra)* does not come to the rescue of respondent No.1.

8. Keeping in view the aforesaid facts, the order under challenge is set aside while allowing the present revision petition. Needless to observe that the observations made by this Court shall not be construed as final expression of opinion on the merits of the case. The plaintiff shall be entitled to prove that he has been forcibly dispossessed. Thereafter, the trial Court shall proceed with the matter, in accordance with law.

9. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

November 22, 2022

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No