

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

119+274

CR No. 1002 of 2022 (O&M)

Date of Decision:28.3.2022

M/s Gulf Esfalt Private Limited

---Petitioner

Versus

Ajit and others

---Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. H.S.Rai, Senior Advocate with
Mr. Alok Kumar Jain, Advocate
Mr. Kunal Mulwani, Advocate
Mr. Sidharth, Advocate and
Mr. Ajay Kuvichh, Law Officer
for the petitioner

Mr. Harkesh Manuja, Advocate
for the respondents.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner-defendant company (hereinafter called 'company') has come in revision to impugn the order dated 15.03.2022 (Annexure P-20) passed by learned Civil Judge (Junior Division), Sonapat whereby the company had been directed to provide passage upto 15 feet wide to the respondents-plaintiffs leading to their fields i.e. the suit property, without any obstruction within 7 days from that date, failing which the boundary walls from point A to B as mentioned in the attached site plan would be demolished at the instance of the respondents-plaintiffs with necessary police help.

Learned senior counsel for the petitioner while impugning the order dated 15.03.2022 (Annexure P-20) contends that the company had constructed a boundary wall in the year 2017 i.e. prior to the filing of the suit for permanent injunction, around the entire 158K-07M of land (approximately 35 acres) owned by it and comprised in Khewat

No.1184//1006, Khata No.1360, Rec. & Killa Nos.91//2(1-7), 3/2//1 (2-19), 3/2/2 (3-19) which fact finds duly reflected in both the written statement as well as the counter-claim filed by the company. He further submits that an application for ad-interim mandatory injunction in a suit for permanent injunction was not maintainable in as much as no such prayer for mandatory injunction was made in the main suit by the respondents-plaintiffs. It was vehemently submitted that while passing the impugned order (Annexure P-20) the trial Court failed to appreciate the factual position and other material on record including an order dated 23.09.2020 (Annexure P-17) passed in an application filed by the respondents-plaintiffs for early hearing, wherein it had been categorically noticed by the Court concerned that there was no material on record to show that any construction was underway at the spot or was to be undertaken in the near future. Learned senior counsel, while drawing the attention of this Court to the reply filed by the company (Annexure P-19) to the application for ad interim mandatory injunction, submitted that the completion certificate of the boundary wall which was annexed with the said reply left no manner of doubt that the boundary wall was indeed in existence when the suit in question was instituted. It was further submitted that an application under Order 39 Rule 2A of the CPC was already pending adjudication before the trial Court wherein the relief sought was similar to the one in the application under Section 151 of the CPC dated 08.04.2021 (Annexure P-18) pursuant to which the impugned order was passed. It was urged that hence, on this ground itself, the matter being *subjudice*, the impugned order deserved to be set aside. Learned senior counsel in support of his submissions has placed reliance upon

Bachhaj Nahar Vs. Nilima Mandal and another : (2008) 17 SCC 491.

Per contra, learned counsel for the respondents while controverting the submissions made by the counsel opposite submitted that the respondents-plaintiffs had been in physical possession of the suit property and had been cultivating it since the time of their forefathers as *Gair Marusi* which was evident from the revenue records including the Khasra Girdawari of the land in dispute which was in the name of their father, late Sh. Hukam Chand. He further submitted that the company had created obstruction in the peaceful possession of the respondents-plaintiffs by raising a boundary wall around the suit property during the pendency of the suit in question as a result of which they were unable to have access to the suit property. Learned counsel vehemently reiterated that the boundary wall had been constructed by the company in violation of the ad interim injunction order dated 30.10.2018 and an application under Order 39 Rule 2A of the CPC in that regard had also been filed by the respondents-plaintiffs.

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

It would be pertinent to notice in brief a few relevant facts. The respondents-plaintiffs-Ajit Singh and others filed a suit for permanent injunction restraining the company from dispossessing the respondents-plaintiffs from the suit property i.e. khewat No. 184//1006, Khata No. 1360, Rect. & Killa Nos.91//2(1-7), 3/2/1 (2-19), 3/2/2 (3-19) total measuring 08 K-05 M, situated in the revenue estate of village Kurar Ibrahimpur Tehsil and District Sonapat.

It needs to be pointed out that a perusal of the plaint, which has been annexed as Annexure P-5, would show that the respondents-plaintiffs

are silent as to in what capacity they have been cultivating the land in question after the death of their father Sh.Hukam Chand. They have simply stated that their father was in physical cultivating possession of the suit land, who expired on 16.12.2007 and after his death, the respondents-plaintiffs had been in possession of the suit property.

The said suit of the respondents-plaintiffs was contested by the company wherein it disputed the possession of the respondents-plaintiffs and claimed that it had purchased total land measuring 158K-07M (which was inclusive of the suit property measuring 8K-5M) from M/s Jindal Niryat Limited in the year 2017 and at the time of purchase of the land in question, the vendor had delivered the actual physical possession of the whole land including the suit property to the company.

Vide order dated 30.10.2018 (Annexure P-7), the Civil Judge (Junior Division) Sonapat, while disposing of the *ad interim* injunction application, restrained the company from dispossessing the respondents-plaintiffs and from interfering in their peaceful possession over the suit property, otherwise than in due course of law, by observing that there was no dispute with regard to the fact that the company was the owner of the suit property, but, prima facie the respondents-plaintiffs were in possession of the suit property.

The order dated 30.10.2018 was impugned before the District Judge, Sonapat, which, however, was dismissed vide order Annexure P-13 on 24.4.2019. Thereafter, a revision petition against order dated 24.4.2019 was preferred which is pending adjudication before this court.

Meantime, the company also filed an application before the Tehsildar, Sonapat for carrying out necessary corrections in the khasra

girdawari entries pertaining to the suit property, which were continuing in the name of late Sh. Hukam Chand. The aforesaid application is stated to be still pending adjudication. The company filed the written statement and subsequently also filed a counter claim, claiming its possession and sought relief of permanent injunction restraining the respondents-plaintiffs from dispossessing the company from the suit property. It has not been disputed by the parties that an application under Order 39 Rule 2A of the CPC dated 05.03.2019 (Annexure P-8) is pending adjudication before the trial Court, which was filed by the respondents-plaintiffs seeking initiation of contempt against the company for alleged violation of the order dated 30.10.2018 and for removal of the said boundary wall allegedly raised illegally by the company during the pendency of the suit.

Admittedly, it is during the pendency of the aforementioned application under Order 39 Rule 2A of the CPC, the respondents-plaintiffs moved an application under Section 151 of the CPC seeking removal of the walls from point A to point B as shown in the attached site plan, to have free access to the suit property.

Vide order dated 15.03.2022 (Annexure P-20) the Civil Judge (Junior Division), Sonapat passed the impugned order in the following terms:-

"In view of the above discussion made, the application filed by the applicant/plaintiff is allowed under section 151 CPC and defendant is directed to provide Rasta to the plaintiffs leading to their fields upto 15 feet wide over the suit property without any obstruction within 7 days from today, failing which the boundary walls from point A to B as

mentioned in the attached site plan shall be demolished at the instant of the applicant/plaintiffs with necessary police help. Copy of this order be sent to SHO Concerned for providing adequate police help to the plaintiffs in case defendant fails to provide Rasta to the plaintiffs leading to their fields 15 feet wide over the suit property."

It needs to be noticed that the application which was filed under Order 39 Rule 2A of the CPC was duly contested by the company by filing its reply. It would be pertinent to observe that the relief which was sought by the respondents-plaintiffs on the basis of which the impugned order dated 15.03.2022 (Annexure P-20) was passed, is akin to the relief sought in the application under Order 39 Rule 2A of the CPC (Annexure P-8) which was admittedly filed prior to the application under Section 151 of the CPC seeking ad-interim mandatory injunction. The matter is, thus, *subjudice* with respect to the relief claimed by the respondents-plaintiffs in the subsequent application filed under Section 151 of the CPC. It would be apposite to mention that the impugned order does not reflect as to how and on the basis of what material, the Court below arrived at a conclusion that there was an obstruction created by the company on the passage leading to the suit property subsequent to the passing of the order dated 30.10.2018 (Annexure P-7).

Thus, as a sequel to the above, the instant revision petition is allowed and the impugned order dated 15.03.2022 (Annexure P-20) is set aside.

This Court is of the opinion that since both the parties are claiming possession of the suit property and in the initial plaint the

respondents-plaintiffs had not sought the relief of mandatory injunction, which of course is a subsequent development as alleged by the respondents-plaintiffs, hence, both the parties are directed to maintain status quo.

The trial Court, without being influenced by any observations made hereinabove, is directed to decide the main suit for permanent injunction, in accordance with law, expeditiously within 04 months, more so, since it has been pending between the parties for almost 04 years.

Since the main case is decided, there is no need to pass separate orders on the pending miscellaneous applications, which are disposed of accordingly.

(MANJARI NEHRU KAUL)
JUDGE

28.3.2022

PARAMJIT/Vinay

Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No