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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1551-2022

Decided on : 14.07.2022

Jaibir and others

. . . Petitioners

Versus

Smt. Usha

. . . Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. D.P.S. Bajwa, Advocate
for the petitioners.

MANJARI NEHRU KAUL, J. (Oral)

Petition herein, under Article 227 of the Constitution of India is for setting aside of the impugned order dated 22.03.2022 passed by learned Additional District Judge, Hisar, vide which, the order dated 23.03.2022 passed by learned Civil Judge (Junior Division), Hisar (Annexure P-5) has been set aside.

Learned counsel for the petitioners (defendants before the trial Court) *inter alia* contends that the lower Appellate Court while passing the impugned order failed to appreciate that they were owners in possession of the suit property. Hence, being owners in possession, the petitioners were well within their right to demolish the house for its re-construction and renovation as it was 2 ft. below the street level and led to water logging. He further submits that neither the respondent nor her alleged vendors had ever been in possession of the suit property and hence, they were not entitled to

claim possession. Learned counsel furthermore submits that application under Order 39 Rules 1 and 2 read with Section 151 CPC was not moved at the initial stage but at a highly belated stage, from which, the *malafides* of the respondent (plaintiff before the trial Court) could be discerned. Learned counsel thus submits that the nature of the suit property had already been changed substantially, therefore, restraining the petitioners from changing the nature of the suit property any further would be meaningless.

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

It would be apposite to observe here that relief of injunction being an equitable and discretionary relief, cannot be claimed as a matter of right. The Court at the stage of deciding an application under Order 39 Rule 1 and 2 CPC cannot be expected and is not required to go into the merits of the case. The tests to be applied while granting temporary injunction are: (i) whether the plaintiff has a *prima facie* case (ii) whether balance of convenience is in favour of the plaintiff (iii) whether the plaintiff would suffer irreparable loss in the absence of interim injunction not being granted to him.

All the aforementioned three ingredients must co-exist and in the event of even one out of the above three being absent, the application under Order 39 Rules 1 and 2 would fail.

Adverting to the case in hand, the respondent is seeking the relief qua a double storeyed building i.e. suit property described in the head of the plaint and further recovery of *mesne* profits.

The pleaded case of the respondent is that she purchased the suit property vide sale deed bearing No.9217 dated 23.02.2017, situated at

Village Khokha, Tehsil and District Hisar from Shri Hanuman, Sh. Shree Niwas, Sh. Ved Parkash and Sh. Ramesh Kumar sons of Shri Hukmi Chand alias Hukam Chand for a sale consideration of Rs.4,46,000/- and the symbolic possession of the suit property was also delivered to her by her vendors. The respondent also alleged that the petitioners had illegally and forcibly taken possession of the suit property after breaking and opening the locks of the said house on 13.04.2016 during her and her family members absence. However, as soon as she learnt about it, her husband immediately lodged a complaint against the petitioners in the police station but the police failed to act on the complaint.

On a perusal of the impugned order, this Court has no hesitation in observing that the lower Appellate Court was justified in granting interim injunction against the petitioners. The respondent was successful in making out a *prima facie* case to the effect that the balance of convenience lay in his favour and he would suffer irreparable loss otherwise.

Needless to add, the suit property needs to be preserved till the final disposal of the suit as *prima facie* balance of convenience lies in favour of the respondent. Whether the plaintiffs are owners in possession or not, as already observed above, would be a matter of trial and this Court cannot be expected to give a finding qua the same, more so when nothing has been placed on record by the petitioners to *prima facie* support their submissions to the contrary.

As a sequel to the above, the instant revision petition being devoid of merits is dismissed. However, it is made clear that anything observed here-in-above shall not be construed to be an expression of

opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

July 14, 2022
gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No