

Sr. No. 133

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

**CR-407-2023 (O&M)
Date of decision: 23.01.2023**

Gurmail Singh

...Petitioner

Vs.

Avtar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ish Puneet Singh, Advocate,
For the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein, under Article 227 of Constitution of India is for staying further proceedings arising in Exe-124/2019 titled as "Avtar Singh Vs. Gurmail. Singh etc. till the decision of the first appeal before learned First Appellate Court in CA-179-2019.

2. Brief facts of the case are that respondents No.1 and 2/plaintiffs filed a suit for possession of a plot falling within the abadi area of village Dhaktana, Tehsil Kharar, District Mohali and for permanent injunction. The civil suit was instituted on 19.05.2014, wherein it was alleged that defendants had forcibly taken possession of the suit property on 10.02.2014. Defendants appeared and filed their written statement and claimed ownership over the suit property on the basis that their father had purchased the suit property from Gurdev Singh and Sewa Singh vide agreement dated 22.06.1982. Evidence was led by the parties and the suit filed by the plaintiffs was decreed vide judgment and decree dated 14.03.2019 by learned trial Court.

2.1. Dissatisfied, defendants including petitioner preferred an appeal before learned First Appellate Court along with an application under Order 41 Rule 5 of the Civil Procedure Code. Notice in the said appeal and

application for stay has been issued. After issuance of notice in the appeal, plaintiffs preferred Execution Petition. Learned Executing Court issued warrants of possession for execution of decree passed by learned trial Court vide order dated 26.07.2022. Feeling aggrieved, petitioner moved an application dated 26.09.2022 (Annexure P-5) for putting up of the case file before learned First Appellate Court along with an application for grant of *ex parte* interim stay. Notice in the said application was issued and now main appeal as well as said application is pending adjudication for 20.02.2023.

2.2. Subsequent thereto, learned Executing Court issued fresh orders for warrants of possession. On 12.01.2023, Patwari along with Halqa Kanungo and police came to the land of petitioner to take possession of the property in pursuance to the warrants of possession. Petitioner has been in continuous possession over the suit property from the date of purchase in the year-1982 and as such, further proceedings before learned Executing Court are liable to be stayed till the decision of the first appeal. Hence, the instant petition.

3. Having heard the arguments at some length, I am of the view that in order to balance the equities, at this stage, though learned Executing Court may proceed further with the matter but shall allow petitioner to maintain status quo *qua* his possession till disposal of the application seeking stay on the operation of the impugned judgment and decree of the trial Court, which is stated to be pending in the First Appeal bearing Civil Appeal No.189-2019 pending in the Court of Sh. Parminder Singh Grewal, Additional District Judge, SAS Nagar, Mohali.

4. In the premise, instant Civil Revision is though disposed of, but it is made clear that grant of indulgence by this Court should not be

construed to mean any reflection on merits of the claim of the petitioner to seek interim stay on the operation of the judgment of learned trial Court and learned First Appellate Court is expected to proceed objectively by making its own assessment after hearing the arguments of both sides.

(ARUN MONGA)
JUDGE

23.01.2023
Vandana

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