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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: April 17, 2023

Paramjit Kaur

....Petitioner

versus

Sukhraj Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Deepak Arora, Advocate,
 Mr. Harpreet Singh, Advocate,
 Mr. Anhad Singh, Advocate for petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for quashing/ setting aside impugned order dated 29.03.2023 (Annexure P-3) passed by learned District Judge, Gurdaspur whereby appeal preferred against order dated 19.01.2023 (Annexure P-2) passed by learned Civil Judge (Junior Division), Gurdaspur declining application under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 (for short 'CPC') for restraining defendants from changing nature of land from agricultural to residential/ commercial, was dismissed.

2. Learned counsel for the petitioner submits that the suit property is in second round of litigation between the parties. Previously, defendant-respondents No. 1-2 herein had filed a suit for declaration of their title seeking share in the suit land. The suit was contested by the petitioner herein and Paramjit Kaur being the LRs of Piara Singh and was dismissed by the learned Civil Judge, Senior Division, Gurdaspur vide judgment dated 30.2014. First appeal against the said judgment was also dismissed by the learned Additional District Judge on 25.10.2016. RSA No. 6271-2016 was disposed of by this Court vide order dated 23.03.2021 (Annexure P-1) in terms of compromise of even date between the parties.

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2.1. After the compromise, the sisters of the petitioner filed an application before this Court alleging that the petitioner had acted fraudulently while entering into the compromise with the other side. This Court issued a notice of that application, but there is no order of recall of this Court's order dated 23.03.2021. In that very matter, the present petitioner had also moved an application stating that defendant-respondents No. 1-2 were not giving her the relevant as per compromise. The petitioner has now also filed a contempt petition in this regard.

2.2. The instant petition has arisen out of another suit No. 1226 of 2022 filed by the petitioner for permanent injunction restraining the defendant-respondents from changing the nature of the suit property and from alienating specific khasra numbers beyond their share without partition of the suit property and until the final disposal of the pending miscellaneous contempt application in RSA No. 6271-2016.

3. Vide an order dated 19.01.2023 (Annexure P-2), learned trial Court, while observing that since plaintiff has already settled the matter in RSA-6271-2016, which was disposed of vide order dated 23.03.2021 (Annexure P-1) and thereafter, contempt petition No.1281 of 2022 was pending before this Court, and plaintiff in the given case has filed second round of litigation pertaining to the matter which was *subjudice* before this Court, dismissed the application under Order XXXIX Rule 1 and 2 of CPC. Aggrieved, petitioner filed appeal before learned District Judge, Gurdaspur, which was also dismissed vide order dated 29.03.2023 (Annexure P-3).

4. Learned counsel would further contend that petitioner filed instant suit before learned trial Court on fresh cause of action since after decision of earlier Civil Suit filed by respondents based on compromise arrived on 23.03.2021, respondents No.1 and 2 started raising construction of boundary walls in order to materially stop petitioner from entering in property in question. He further

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contends that the learned courts below have erred in dismissing the petitioner's application for ad-interim injunction and that the impugned orders, if allowed to stand, would cause irreparable loss to the petitioner, besides resulting in multiplicity of litigation and, thus deserve to be set aside.

5. Given the nature of order being passed, there is no necessity to issue notice to respondent/defendants, as no serious prejudice would be caused to them. Notice to respondents is thus dispensed with.

6. I have heard learned counsel for petitioner and gone through the case file.

7. Having heard learned counsel, I am of the view that in order to balance the equities and to avoid any multiplicity of litigation, it would not be desirable if the suit property is sold to any third party, at this stage. In the premise, parties are directed to maintain status quo in respect of the suit property with respect to the title, as it existed on the day of filing of suit. Furthermore, in case, any construction is carried out on the suit property, needless to say same shall be at sole peril of the parties doing so and suit property will have to be restored to its original position depending upon outcome of the trial. Impugned orders dated 19.01.2023 (Annexure P-2) and 29.03.2023 (Annexure P-3) are modified, accordingly.

8. Disposed of in above terms.

9. Pending application, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 17, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No