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2023:PHHC:046448

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

C.R NO. 1154 of 2021 (O&M)

DATE OF DECISION: 23.03.2023

Surender Kumar

...Petitioner

Versus

Ram Sarup

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sandeep Goyal, Advocate,
For the petitioner.

Dr. Payal Mehta, Legal aid counsel,
For the respondent.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside impugned order dated 05.05.2021 (Annexure P-3) passed by learned Additional Civil Judge (Senior Division), Gulha and order dated 26.05.2021 (Annexure P-5) passed by learned Additional District Judge, Kaithal, whereby petitioner's application under Order 39 Rules 1 and 2 read with Section 151 CPC, was dismissed.

2. Succinct facts, first as pleaded in the revision petition.

2.1. Plaintiff/petitioner, being owner of house in dispute, filed a suit for possession and permanent injunction. Previously said house was owned by Siri Ram, who sold the same to plaintiff for sale consideration of Rs.28,000/-. In this regard, entry dated 29.04.1998 was also made in the register. Thereafter, plaintiff constructed two shops in the property in dispute. Defendant/respondent herein was well known to plaintiff and

upon request, he was allowed to reside in the house for one year. Defendant with ill intention has started raising construction over the house illegally. Hence, the suit as well as application for grant of ad interim injunction.

2.2. Upon notice, respondent/defendant appeared and filed written statement and reply to injunction application by taking some preliminary objections like maintainability etc. On merits, the averments contained in the plaint were denied.

2.3. Learned trial Court dismissed the application moved by plaintiff/petitioner vide impugned order dated 05.05.2021 (Annexure P-3).

2.4. Aggrieved, petitioner preferred civil miscellaneous appeal before learned Additional District Judge, Kaithal, which was also dismissed vide impugned order dated 26.05.2021 (Annexure P-5).

3. Heard learned counsels for the parties.

4. During the course of hearing it has been argued that during pendency of revision petition before this Court, vide interim order dated 21.09.2021, alienation of suit property was stayed but there was no specific order with regard to further construction to be raised on the suit property. Learned counsel for respondent states that as per her instructions, revision petition in any case is rendered infructuous if respondent/defendant in the suit has already constructed house on the suit land and is currently residing in same.

5. Perusal of *ad-interim* injunction application appended with the plaint reveals that temporary injunction before learned trial Court was

sought on two-fold basis : 1) no further construction to be carried out; and
2) to restrain respondent/defendant from alienation of suit property.

5.1. As regards construction, as already discussed, learned counsel for respondent states that per her instructions respondent has already constructed house over the property in dispute and is currently residing there and therefore, revision petition has been rendered infructuous.

5.2. As regards fear of petitioner/plaintiff that dismissal of the appeal would result in vacation of interim order *qua* alienation, no further orders *qua* same is required to be passed, in view of the legal position that any alienation made on behalf of respondent/defendant would be subject to the principle of *lis pendence*. The prospective buyer would naturally be subject to final outcome of trial of the suit.

6. As a further measure to protect the petitioner's interests it is directed that, if at all the defendant has to alienate the portion of property in his possession, he will incorporate recital in the agreement of sale about pending litigation. With this direction, the petition is disposed of.

7. Pending application(s), if any, shall also stand disposed of.

MARCH 23, 20223
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No