

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

CR 1714/2021 (O&M)

Date of decision: 23.01.2023

Naresh Saini

.....Petitioner

Vs.

Sunil Chauhan and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Prashant Singh Chauhan, Advocate for the
petitioner.
Mr. Amandeep Rana, Advocate for the respondents.

Nidhi Gupta, J.

Present revision petition has been filed seeking setting aside/modifying the impugned order dated 7.1.2021 passed by the Id. Civil Judge (Junior Division) Gurugram whereby the application filed by the petitioner/ plaintiff under Section 151 CPC, for issuance of direction to SHO to stop the construction work at the spot, has been dismissed.

Facts in brief are that the petitioner acquired ownership-in-possession of Plot measuring 355.5 square yards situated within the Lal Dora of Abadi of Village Wazirpur, District Gurugram by way transfer deed bearing Vasika No.892/20.7.2020. He filed civil suit seeking decree of permanent injunction restraining the defendants/ respondents herein, from interfering in the peaceful

possession of the petitioner/plaintiff, and also raising any objections on construction by the petitioner over the suit plot. Along with the suit, the petitioner filed an application under Order 39 Rules 1 and 2 CPC.

It is submitted by the learned counsel for the petitioner that vide order dated 6.8.2020 the application filed by the petitioner under Order 39 Rules 1 and 2 CPC was allowed and the defendants/respondents were restrained from interfering in peaceful possession of the plaintiff over the suit plot (as described in the registered release deed bearing no.892 dated 20.7.2020). The defendants/respondents were also restrained from raising objection to construction to be raised over the suit plot by the plaintiff. It is submitted that this order dated 6.8.2020 was never challenged by the respondents and attained finality. Learned counsel submits that however, thereafter, as the possession of the petitioner was being interfered with and construction work was being carried out by the respondents/defendants over the suit property, petitioner filed the present application u/s 151 CPC (Annexure P-2) for *‘issuing direction to SHO concerned to stop the construction work at the spot’*. Respondents in their reply to this application stated that *“they had raised construction over the ancestral land and erected boundary wall height up to 4 feet within Khewat No.92, Khatoni No.114, Killa No.3 (6-14), 6-0 Chahi & 0-14 Gair Mumkin Makaan Kila No.6 (3-4) Gair Mumkin Makaan, Killa No.15/1 (1-5) Chahi in the month of January 2020. The answering respondents have no concern over the land of Lal Dora within the revenue estate of Village Wazirpur, District Gurugram”*. It is submitted that in view

of the admission on the part of the respondents that they were raising construction over the suit plot, which was clearly in contravention of the direction of the Ld. Trial Court contained in order dated 6.8.2020, the dismissal of petitioner's application dated 16.9.2020 (Annexure P-2) is unsustainable. It is submitted that instead of restraining the defendants from interfering in the possession of the petitioner, the Ld. Trial Court has, vide the impugned order dated 7.1.2021, instead held that:-

"From the contentions of the plaintiff as mentioned in the present application, it comes out that defendants have encroached upon the suit property after the pronouncement of order dated 06.08.2020. At the time of arguments, the plaintiff was present in the court and he disclosed that now, suit property is in the possession of the defendants and his possession be restored through this application. As the plaintiff has been dispossessed by the defendants, no direction can be issued to SHO concerned. Now, the right recourse for the plaintiff is to amend his plaint. As according to plaintiff, he has been dispossessed in contravention of order dated 06.08.2020, he has to file application under order XXXIX Rule 2A of Code of Civil Procedure, 1908. By way of this application, the possession of plaintiff cannot be restored. If it is so done, it would amount to bypassing of law for recovery of possession".

It is submitted that the aforesaid direction of the Ld. Trial Court is illegal and deserves to be set aside in view of the abovesaid facts.

In response, it is submitted by the learned counsel for the respondents that the defendants are in possession of their own ancestral land and they have no connection whatsoever with the suit plot which is situated in Lal Dora. Learned counsel for

the respondents refers to written statement (Annexure P-3) filed by them in response to the petitioner's application at Annexure P-2 for issuing direction to SHO concerned to stop the construction work at the spot, to state that the respondents are raising construction over their own ancestral land. It is submitted that khewat and khatoni numbers have been mentioned in regard to their ancestral land and therefore, it is clear that the respondents are not raising construction over the suit plot which is admittedly, Lal Dora.

No other argument has been raised by the learned counsel for the parties.

Heard Ld. Counsel for the parties.

Vide order dated 6.8.2020, the defendants/respondents have been restrained from interfering in possession of the suit plot, as have also been restrained from raising objection to the construction to be raised over the suit plot by the petitioner. The specific injunction as contained in para 6 of order dated 6.8.2020 is reproduced hereinbelow:

“In order to establish his contentions, the plaintiff has produced transfer deed, application filed before Tehsildar for verification of the plot. It was verified by Lambardar that Phoolwati [mother of plaintiff] is owner of plot measuring 355.5 sq. yards situated within Lal Dora. In the transfer deed, dimensions and boundary of the suit plot has been mentioned. The plaintiff has also placed on file photographs of his plot. On the other hand, the defendants have placed on file jamabandi. There is no dispute that record of the plots situated within Lal Dora is not maintained in Jamabandi. It is consistent stand of the plaintiff that

his plot is situated within Lal Dora. According to defendants, their land is comprised in Khewat. The defendants have not pleaded that their land comprised in khewat is situated adjacent to Lal Dora land or the plot of the plaintiff. The defendants have also not pleaded that suit plot is not situated within Lal Dora of village Wazirpur. No document showing title of defendants over the suit plot has been placed on file by the defendants. On the other side, the registered transfer deed, application filed by the plaintiff before Tehsildar and verification made by Lambardar support the contentions of the plaintiff. All the ingredients for grant of interim relief are in favour of the plaintiff. As the plaintiff is owner-in-possession of the suit plot and defendants have no concern with the same, the plaintiff is entitled to protect his possession. Hence, till the decision of the suit, the defendants are restrained from interfering in possession of the plaintiff over the suit, plot [as described in registered release deed bearing No.892 darech 20.07.2020]. The defendants are also restrained from raising objection to construction to be raised over the suit plot by the plaintiff. The application stands disposed of. Nothing observed herein shall have effect on the merits of the suit”.

Admittedly, the order dated 6.8.2020 has attained finality. Therefore, in view of the clear categoric direction contained in order dated 6.8.2020, the defendants could not have dispossessed the petitioner from the suit property thereafter. In this view of the matter, it is clear that the observation of the Ld. Trial Court that the right recourse for the petitioner in this situation was to amend his plaint, and file application under Order XXXIX Rule 2A CPC, in my view is incorrect as it is not in conformity with the law laid down by the Hon’ble Supreme Court in the case of **Meera Chauhan v Harsh Bishnoi and another,**

Law Finder Doc Id # 125181. In the said case, the Hon’ble

Supreme Court, while considering the vast powers conferred upon the Courts under Section 151 CPC, held in paras 17 and 18 that:

“17. At the same time, it is also well settled that when parties violate order of injunction or stay order or act in violation of the said order the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.

18. It is also well settled that when, in the event of utter violation of the injunction order, the party forcibly dispossesses the other, the Court can order restoration of possession to the party wronged.”

It is to be noted that the Hon’ble Supreme Court made the abovesaid observation while considering the question whether an application for restoration of possession filed under Section 151 CPC could be entertained by the Court when specific provision under Order 39 of the CPC has been made for grant of injunction in the form of mandatory order in the exercise of power under the said Order. It is in the above sad situation that the Hon’ble Supreme Court observed as above, that in case of forcible dispossession in violation of injunction order, the Courts, under Section 151 CPC have the power to restore possession.

This view of the Hon’ble Supreme Court has been followed by this Court in the case of **Ramphal and another v Santosh Bhagana and another**, Law Finder Doc Id # 1006040, where, in circumstances similar to the case at hand, where the petitioner therein, though had an injunction granted in his favour

under Order 39 Rules 1 and 2 CPC yet, was illegally dispossessed, was relegated by the Trial Court to avail the remedy under Section 6 of the Specific Relief Act, this Court held in para 16 as follows:-

“Though the aforementioned order is subject to challenge in the revision petition but the fact of the matter is that opinion of the lower Appellate Court was that defendant No.1-petitioner in the miscellaneous appeal bearing No.28 of 2015 had not been able to place on record any document to show that defendant No.2 (HUDA) had handed over possession to defendant No.1. In fact, the possession of the parties has to be determined on the day when they approached the Court. In my view, it is a fit case where defendant No.1 has violated the order of the Court below and should not have relegated to avail the remedy under section 6 of the Specific Relief Act but come to the rescue of the plaintiffs in providing police assistance in view of the ratio decidendi culled out by Hon'ble Supreme Court in Meera Chouhan's case (supra). If the impugned order is allowed to sustain, people will stop reposing faith in the judiciary and may take law in their hands for resolving the disputes and opt for rebellious attitude. The duty of the police is to maintain law and order and assure safety of the citizens but the present case is the highest degree of aberration, much less, repugnancy. The provisions of section 151 of the Code of Civil Procedure Code can be put into action against the person or party to the suit, otherwise the defendant against whom the action sought to be taken, would resort to unethical method in handing over possession to the third party.”

Above said view has been reiterated by this Court in judgments rendered in **Thakur Dass v Harijan Sudhar Samiti, Law Finder Doc Id # 38518; Ishwar and others v Asha Ram and others, Law Finder Doc Id # 705553; and Gram**

**Panchayat, Daroli Jat v Smt.Lokesh Devi, Law Finder Doc Id
26397.**

Ld. Counsel for the respondent has been unable to dispute this position in law, and has not cited any case law to the contrary.

Accordingly, the impugned order dated 7.1.2021 is set aside and the present revision petition is allowed and application filed by the petitioner under Section 151 CPC is allowed. The concerned SHO is directed to provide police help to the petitioner to restore the possession of the petitioner as in existence on dated 6.8.2020 in compliance of injunction granted by the Id. Civil Judge (Junior Division), Gurugram, vide order dated 6.8.2020 passed in Civil Suit No. 1239 of 2020. A copy of this order be communicated to the concerned SHO for implementation. Liberty is also granted to the petitioner to move appropriate application in accordance with law in case the aforementioned directions are not complied with.

**(Nidhi Gupta)
Judge**

23.01.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No