

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.111+289

Case No. : CR-3532-2022 (O&M)

Date of Decision : August 03, 2023

Abhay Singh

.... Petitioner

vs.

Urmila and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. N. C. Kinra, Advocate
for the applicant/petitioner.

Mr. R. A. Yadav, Advocate
for respondents no.1 and 2.

* * *

GURBIR SINGH, J. :

1. **CM-13393-C-II-2023** : This is application under Section 151 CPC, for placing on record the copy of the written statement dated 26.09.2022 (Annexure P-11). For the reasons mentioned in the application, the same is allowed and copy of the written statement dated 26.09.2022 is ordered to be taken on record as Annexure P-11.

2. **Main Case** : Challenge in this revision petition filed under Article 227 of the Constitution of India is to order dated 12.01.2022 (Annexure P-1), passed by learned Civil Judge (Junior Division), Gurugram (hereinafter referred to as – the Trial Court) in Civil Suit No.3379 of 2021, whereby the application moved by the plaintiff-petitioner to hand over the articles/goods/agriculture produce/animal food/water pipes etc. to him, has been dismissed.

3. Learned counsel for the petitioner has submitted that the plaintiff/petitioner filed a suit for declaration with consequential relief of permanent and mandatory injunction against respondents no.1 and 2. The petitioner challenged the gift deed dated 16.10.2020. The petitioner, immediately on coming to know about the fraud, filed a suit, in which status quo order was passed. Respondent no.1 is neither daughter-in-law of the petitioner nor respondent no.2 is son of the petitioner. The parties belong to the same village. Panchayat has also verified in Annexure P-9 that respondent no.1 is not daughter-in-law of the petitioner. Respondents no.1 and 2 forcibly occupied the suit land. The Panchayat has also given a writing to that effect (Annexure P-8). The photographs showing the articles of the petitioner lying at the suit property are Annexures P-10/1 to P-10/3. In the written statement, respondents/defendants admitted that the petitioner/plaintiff agreed to sell the suit land for consideration, for repayment of loan taken by him. The petitioner/plaintiff himself suggested to get the gift deed executed instead of sale deed. The respondents/defendants, being innocent and illiterate persons, agreed to the same to avoid the stamp duty. The learned Trial Court, without applying mind, passed the impugned order and dismissed the application of the petitioner/plaintiff for return of articles.

4. Learned counsel appearing for respondents no.1 and 2 has submitted that in the injunction application, there was no recital that any article of the plaintiff/petitioner was there on the suit property. No photograph of the suit property was filed. The Trial Court has rightly passed the status quo order. A lawful order has been passed by the learned Trial

Court and the application has rightly been dismissed.

5. Heard.

6. The plaintiff/petitioner filed the application on the ground that the defendants/respondents broke open the locks of the suit property and took away his articles. Para no.6 of the impugned order reads as under :-

“In whole of the plaint, there is no whisper of any such tuda, wheat, bajra, pipes, chakki, motor etc. The injunction application also does not contain any such assertion. There is also nothing specific mentioned in the plaint or injunction application about the alleged shed existing in the property. No photographs of the property were filed by the plaintiff with the suit, injunction application, even with this application under section 151 CPC. There is no material on file to show that any such material even existed, which the plaintiff's claiming through this application. Whether the plaintiff was in possession over the suit property at the time of filing of the suit and passing of status quo order by the court, is a question which may be decided later, but for the purpose of this application, the plaintiff/applicant should have atleast placed on record some material to show the existence of the above mentioned things on the property, the plaintiff's ownership on the same and the fact that the defendants are having the same in their possession. In that task, the plaintiff/applicant has failed miserably.”

7. Every Court is required to impart complete justice to the parties.

deed was executed by the plaintiff/petitioner. The respondent no.1 is daughter-in-law and respondent no.2 is son of the petitioner. Apparently, the recital in the gift deed is wrong. A Court is required to first determine possession of party at the time of filing of the suit and then to pass order of status quo. The learned Trial Court was required to give specific finding if the plaintiff/petitioner was in possession or defendants/respondents no.1 and 2 were in possession of the suit property on the date of filing of suit. The movable articles lying in the property generally belong to the person who is in possession of the said property. In the absence of such a finding, the application in question could not have been disposed of.

8. In view of above, the present revision petition is allowed and the impugned order dated 12.01.2022 (Annexure P-1), passed by learned Trial Court is hereby set aside. The learned Trial Court is directed to decide the application afresh, in accordance with law.

9. However, nothing contained herein above shall be construed as an expression of opinion on the merits of the case.

10. Pending applications, if any, shall stand disposed of along with this judgment.

August 03, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.