

CR-4410 of 2023

2023:PHHC:102334

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

CR-4410 of 2023

Date of decision: 07.08.2023

Puran Chand Sharma

.....Petitioner

Versus

Mandir Murti Shri Radha Krishan Thakur Dwara Bawna Wala and
others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMARPresent: - Mr. Namit Khurana, Advocate,
for the petitioner.**NAMIT KUMAR, J.**

1. This revision petition has been filed by petitioner-defendant No.1 under Article 227 of the Constitution of India challenging the order dated 24.08.2022 passed by the Court of learned Civil Judge (Junior Division), Jagadhri, vide which application under Order 39 Rules 1 and 2 CPC filed by plaintiff-respondents No.1 to 11, has been allowed and order dated 09.05.2023 passed by the Court of learned Additional District Judge, Yamuna Nagar, whereby appeal filed by petitioner against the order dated 24.08.2022, has been dismissed.

2. Brief facts of the case are that plaintiff-respondents No.1 to 11 filed a suit for possession of the suit land, fully described in the head-note of the plaint, situated in village Kanalsi, Tehsil Jagadhri, District Yamuna Nagar, further for a decree for declaration to the effect that lease agreement dated 01.04.2011 executed between defendant

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No.1-petitioner and plaintiff-Mandir with regard to the suit land is illegal, null and void, further for decree for mesne profits with regard to the suit land and further for a decree for permanent injunction restraining defendants No.1 to 3 from changing the nature of the suit land in any manner or excavating any mineral material from the suit land. Plaintiff-Mandir executed lease agreement dated 01.04.2011 *qua* suit property in favour of defendant No.1 for a period of 99 years against total consideration of Rs.2,97,000/-. Defendant No.1 further executed sub-lease agreement dated 26.07.2021 in favour of defendants No.2 and 3 for a period of three years w.e.f. 01.10.2021 to 30.09.2024 at the rate of Rs.2,50,000/- per acre. In violation of lease agreement, defendants No.2 and 3 along with their employees/associates started doing mining work in the suit land. Plaintiffs along with the plaintiff filed an application under Order 39 Rules 1 and 2 CPC for restraining the defendants No.1 to 3 from changing the nature of the suit land by way of mining and excavation of sand and other minor minerals from it in any manner during the pendency of the suit. Petitioner-defendant No.1 appeared and filed written statement. Trial Court vide order dated 24.08.2022 allowed the application under Order 39 Rules 1 and 2 CPC. Aggrieved against the order dated 24.08.2022 petitioner preferred appeal, which has been dismissed by the by the Court of learned District Judge, Yamuna Nagar, vide order dated 24.08.2022. Hence, this revision petition.

3. Learned counsel for the petitioner contended that Courts below have erroneously allowed the injunction application filed by the

plaintiff inasmuch as there is no violation of the lease agreement and defendant No.1-petitioner was free to use the land in question in any manner he likes. He further contended that Courts below wrongly considered the suit land as agricultural land and nature of the land has not been changed by the petitioner. He contended that application filed by the plaintiff is liable to be dismissed.

4. I have considered the contentions raised by learned counsel for the petitioner and perused the record.

5. Admittedly, lease agreement dated 01.04.2011 was executed between defendant No.1-petitioner and plaintiff-Mandir. Perusal of the said lease agreement would show that petitioner-defendant No.1 was free to use the land for cultivation, for growing trees, installing tubewell. He was also free to give the said land to anyone on *theka/chakota*. There is no mention in the terms and conditions of the said lease agreement that lessee or sub lessee could engage in mining work or excavation of sand and other minor minerals over the suit land. Plaintiffs have specifically averred that nature of the suit land is agricultural one and defendants are doing mining/excavation of sand/other minor minerals from the suit land, which is in violation of the lease agreement and it would make the suit land useless for further use. The Courts below have rightly observed that when it comes out that undertaking of mining/excavation of sand/other minor minerals from the suit land is/are not mandated under the lease agreement, then prima facie case certainly exists in favour of the plaintiffs and balance of convenience also tilts in favour of the

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plaintiffs and moreover, in case defendants or their agents are permitted to undertake/continue the mining activity, then plaintiffs would suffer irreparable loss and injury. It is well-settled law that three essential ingredients i.e. prima facie case, balance of convenience and irreparable loss must coexist so as to entitle any person to the discretionary relief of interim injunction.

6. In view of the above, this Court does not find any illegality or perversity in the impugned orders passed by the Courts below. Hence, the revision petition is dismissed.

07.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No