

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

131

CR-4534-2023

Date of decision: 10.08.2023

Surjit Kaur and Ors.

....Petitioners

Versus

Raj Kumar and Ors.

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Aditya Dassaur, Advocate for the petitioners.

AMARJOT BHATTI, J.

1. The petitioners – Surjit Kaur and others have filed the present civil revision against impugned order dated 01.07.2023 passed by learned Civil Judge (Junior Division), Dasuya in Civil Suit No.668/2016 titled as “*Surjit Kaur & Others Vs. Raj Kumar & Others*” in which the application under Order 38 Rule 5 CPC filed by the petitioners has been wrongly dismissed by passing the aforesaid impugned order.

2. The learned counsel for the petitioners argued that the petitioners had entered into an agreement to sell with the respondents regarding 21 kanals 7 marlas of land situated in village Mirpur, Tehsil Dasuya, District Hosiarpur owned by them. The said property was sold to them vide sale deed dated 01.08.2014 and on that basis they filed application for sanction of mutation. At that stage it came to their knowledge that regarding this property litigation was going on with third party regarding which RSA-2986-2006 was filed and vide order dated 08.01.2007 the alienation of the property was stayed. Therefore, the

mutation was not sanctioned in their favour. The said suit for specific performance was withdrawn with the liberty to file fresh suit. Therefore, the petitioners filed the present suit regarding possession of residential house and in the alternative recovery of Rs.44,77,500/- along with interest. The copy of plaint is Annexure P-1 and copy of written statement filed by the respondents is Annexure P-2. A criminal complaint was also filed. The present petitioners filed application under Order 39 Rules 1 & 2 CPC for grant of interim injunction, which is still pending. They also filed application under Order 38 Rule 5 CPC for the attachment of property to secure their interest. The copy of application is Annexure P-4. The defendants No.1 to 3 filed reply to this application which is Annexure P-5. However, the said application was dismissed by passing impugned order dated 01.07.2023 (Annexure P-6) by giving wrong observation that on the basis of sale deed dated 01.08.2014 mutation was sanctioned in their favour and they should take appropriate steps in pursuance of the same instead of attachment of the suit property. It is argued that the aforesaid observation is wrong and the impugned order was passed without appreciating the actual facts.

3. I have considered the arguments and have gone through the record carefully. The petitioners categorically stated that they had entered into an agreement to sell with the respondents regarding 21 kanals 7 marlas of land regarding which sale deed dated 01.08.2014 was executed. However, during the mutation proceedings it was revealed that RSA-2986-2006 was filed in which there was stay regarding alienation of property. Under these circumstances, the suit for specific performance was withdrawn and the present suit was filed in which the petitioners had filed

suit for possession of residential house in the alternative relief for recovery as detailed in the plaint (Annexure P-1) and in this suit in order to secure their interest they had filed application under Order 38 Rule 5 CPC for the attachment of the property detailed in the plaint. A perusal of impugned order dated 01.07.2023 clearly indicates that these facts were not considered by the learned Civil Judge (Junior Division), Dasuya and the application was declined by giving observation without appreciating the factual position. Therefore, considering these facts, the civil revision filed by the present petitioners is accepted and the impugned order dated 01.07.2023 passed by learned Civil Judge (Junior Division), Dasuya is accordingly set aside with the direction to decide the application under Order 38 Rule 5 CPC afresh preferably within a period of six weeks.

Accordingly, the present civil revision stands disposed of.

10.08.2023
Sunil Devi

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No