

CR-5588 of 2023 (O&M)

2023:PHHC:124700

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

CR-5588 of 2023 (O&M)
Date of decision: 21.09.2023

Billu Sharma

.....Petitioner

Versus

Gram Panchayat of Village Kalwadi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Manish Mehta, Advocate,
for the petitioner.

NAMIT KUMAR, J.

1. Instant revision petition has been filed by the petitioner under Article 227 of the Constitution of India challenging the order dated 19.08.2023 (Annexure P-2) passed by the Court of learned Additional District Judge, Narnaul, whereby order dated 09.02.2023 (Annexure P-1) passed by the Court of learned Additional Civil Judge (Junior Division), Kanina, dismissing the application filed by the petitioner-plaintiffs under Order 39 Rules 1 and 2 CPC, has been upheld.

2. Brief facts leading to the filing of the present revision petition are that petitioner-plaintiffs filed a suit for declaration and permanent injunction along with an application under Order 39 Rules 1 and 2 CPC pleading that the residential land measuring 1388.976

square meters, out of which, there exists houses bearing Ahata No.1, Ghar No.1 of the petitioner-plaintiffs over the land measuring 83.736 square meters and the remaining land measuring 1305.239 square meters is lying vacant and the abovesaid land is situated within the Laldora of village Kalwari, tehsil Kanina, District Mohindergarh as fully detailed and described in para no.2 of the plaint is possessed by the petitioner-plaintiffs prior to dated 26.01.1950 since the time of their forefathers for the last about 75-76 years. It is further asserted that the disputed land was earlier owned by one Maman, who in the month Sawan Saka Samvat 2004 Vikrami Samvat 1947, had mortgaged the disputed land to one Nandlal, the predecessor in interest of the petitioner-plaintiffs for an amount of Rs.60/- and since the day of mortgage of the disputed land, the same has not been got redeemed by its owners and the petitioner-plaintiffs are thus continuing in possession of the disputed land for the last about 75-76 years and have now become owners in possession of the same. It is further asserted that earlier the forefathers of the petitioner-plaintiffs were residing in the disputed land by raising construction of raw houses/huts etc. and later on the father of the petitioner-plaintiffs after removing the old construction thereafter raised construction of new houses and which have been duly shown in the demarcation report dated 03.08.2022. It is further asserted that the possession of the petitioner-plaintiffs over the disputed land is continuing prior to dated 26.01.1950 since the time of their forefathers and the disputed land, which was mortgaged with the

forefathers of the petitioner-plaintiffs, has since not been got redeemed by its owners, therefore, the petitioner-plaintiffs have now become owners of the disputed land by way of an adverse possession and are thus entitled to get entered their names in the revenue record qua the disputed land in capacity as of owners. It is further asserted that the members of the *Laldora* survey committee hold a grudge with the petitioner-plaintiffs and they have thus shown the disputed land to be owned by the respondent-defendant no.1 Gram Panchayat, Kalwari, whereas in the revenue record the disputed land has been shown owned by the abovesaid Maman and who later on mortgaged the same to the abovesaid Nandlal, the predecessor in interest of the petitioner-plaintiffs and thereafter the said Maman left the village. It is further asserted that the respondents-defendants no. 2 and 4 by showing the disputed land to be owned by the respondent-defendant no.1 Gram Panchayat, Kalwari have got executed deed of title bearing no. 4562 dated 05.01.2022 in favour of the respondent-defendant no.5 and which deed of title is against law and facts and is liable to be declared null and void. It is further asserted that now the respondents-defendants without having any right, title or concern and on the basis of wrong entries continuing in the revenue record are bent upon to demolish the residential houses of the petitioner-plaintiffs, so constructed over the disputed land for which the petitioner-plaintiffs have requested not to do so but they are adamant in their refusal.

3. Upon notice, respondent-defendants contested the suit as well as injunction application by filing their written statements thereby denying the claim of the petitioner-plaintiffs.

4. Trial Court after hearing the learned counsel for the parties and going through the record, dismissed the application of the petitioner-plaintiff under Order 39 Rules 1 and 2 CPC vide order dated 09.02.2023. Aggrieved against the order dated 09.02.2023 petitioner-plaintiffs preferred an appeal, which has also been dismissed by the Court of learned Additional District Judge, Narnaul, vide order dated 19.08.2023.

5. Learned counsel for the petitioner contended that impugned orders passed by both the Courts below are wrong and illegal as the Courts below have not properly and judiciously appreciated the documents and material on record. He further contended that the Courts below have erred in considering the mere bald and oral assertions of the respondents contrary to the documentary evidence. He further contended that the impugned orders being perverse are liable to be set aside.

6. I have heard learned counsel for the petitioner and perused the record.

7. Defendants No.1 to 4 in their joint written statement took the following stand: -

“That the disputed land was though earlier owned by the abovesaid Maman yet after he left the village several years ago, the respondentdefendant No.1 Gram Panchayat took

possession of the disputed land and started maintaining the same and later on when the disputed land was got surveyed through drone then the same was shown to be in the possession of the respondent-defendant no.1 Gram Panchayat and consequently deed of sale of the disputed land was executed in favour of the respondent-defendant no.5 department on dated 05.01.2022 as per law after getting verified the facts by the committee consisting of Numberdar, Sarpanch and the member Panchayat. It is further asserted that the appellants-plaintiffs, who have got no concern with the disputed land, have filed instant suit on a forged writing alleged to have been executed by the abovesaid Maman with respect to the mortgage of the disputed land in favour of their forefathers whereas the appellants-plaintiffs never remained in possession of the disputed land.”

8. Defendant No.5 filed its separate written statement to the following effect: -

“That no alleged permanent houses of the appellants-plaintiffs are/were in existence or any part of the disputed land and the appellants-plaintiffs always intended to encroach upon the disputed land by illegal means and in order to implement their evil design, the appellants-plaintiffs have recently tried to encroach upon the disputed land illegally by taking law in their own hands and consequently the villagers then got lodged complaint in this regard with the concerned police and the official of the respondent-defendant no.5 department also moved a complaint with the local police and thereafter the local police, after inspecting the site in question, then got stopped the illegal construction work. It is further asserted

that thereafter again on dated 24/25.12.2022, the petitioner-plaintiffs tried to encroach upon the disputed land by raising illegal construction of toilet and tin shed etc. and on receiving the said information, the official of the respondent-defendant no.5 department again made police complaint and got the illegal work stopped. It is further asserted that in the photographs clicked by the government officials with the help of drone camera at the time of preparing the new records pertaining to the properties situated within old abadi Lal dora of the village under the SVAMITVA scheme, no alleged construction or boundary wall as claimed for by the appellants-plaintiffs is appearing and which fact clearly shows that the appellants-plaintiffs have recently tried to encroach upon the part of the disputed land.”

9. Hon’ble Supreme Court in ***M/s Gujarat Bottling Co. Ltd. and other v. Coca Cola Company and others***, 1995(5) SCC 545 has observed as under: -

“45. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court. While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and its alleged

*violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies. [see: **Wander Ltd. V. Antox India P. Ltd. 1990 (Supp) SCC 727 at Pp. 731-32**]. In order to protect the defendant while granting an interlocutory injunction in his favour the Court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.*

10. Hon'ble Supreme Court in **M/s Gurudas and others v. Rasaranjan and others, 2007(1) R.C.R.(Civil) 341** has observed as under: -

“19. While considering an application for injunction, it is well-settled, the courts would pass an order thereupon having regard to:

(i) Prima facie

(ii) Balance of convenience

(iii) Irreparable injury.

20. A finding on 'prima facie case' would be a finding of fact. However, while arriving at such finding of fact, the court not only must arrive at a conclusion that a case for trial has been made out but also other factors requisite for grant of injunction exist. There may be a debate as has been sought to be raised by Dr. Rajeev Dhawan that the decision of House of Lords in **American Cyanamid v. Ethicon Ltd. [1975] 1 All ER 504** would have no application in a case of this nature as was opined by this Court in **Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd. [(1999) 7 SCC 1]** and **S.M. Dyechem Ltd. v. Cadbury (India) Ltd. [(2000) 5 SCC 573]**, but we are not persuaded to delve thereinto.

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x

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22. While considering the question of granting an order of injunction one way or the other, evidently, the court, apart from finding out a prima facie case, would consider the question in regard to the balance of convenience of the parties as also irreparable injury which might be suffered by the plaintiffs if the prayer for injunction is to be refused. The contention of the plaintiffs must be bona fide. The question sought to be tried must be a serious question and not only on a mere triable issue. [See **Bina Murlidhar Hemdev and Others v. Kanhaiyalal Lokram Hemdev and Others 1999(3) RCR (Civil) 251 (SC) : (1999)5 SCC 222 and Transmission Corpn. of A.P. Ltd (supra)**]. ”

11. Perusal of the record shows that the land in question is a government property, which has already been got vacated from the illegal encroachment of the petitioner-plaintiffs. The petitioner has failed to prove strong *prima facie* case, balance of convenience in his

favour and that irreparable injury to be caused to him in case the injunction as prayed for is not granted to him.

12. The impugned orders passed by the Courts below are quite detailed and well-reasoned and do not suffer from any illegality or infirmity and are not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned orders by way of exercising the revisional jurisdiction.

13. Finding no merit in the revision petition, the same stands dismissed.

21.09.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No