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

CR-2155-2023 (O&M)

Date of decision : 14.11.2024

MALKIT KAUR

....Petitioner

Versus

BALDEV SINGH (SINCE DECEASED) THROUGH LRS ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Harsh Aggarwal, Advocate
for the petitioner.

Mr. M.L. Saggar, Senior Advocate with
Ms. Armaan Saggar, Advocate
for respondents No.1(a) and 1(b).

PANKAJ JAIN, J. (ORAL)

Plaintiff is in revision aggrieved of orders dated 16th of April, 2022 and 22nd of September, 2021 passed by the Courts below in Civil Suit No.441/2019 titled as 'Malkit Kaur vs. Baldev Singh' rejecting her application for interim injunction under Order 39 Rule 1 & 2 CPC.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the petitioner as the plaintiff and the respondents as the defendants.

3. Baldev Singh was admittedly owner of the estate comprising 239 Kanal 8 Marla of land. It was being managed by his son namely



Hargopal Singh. Hargopal Singh leased 166 Kanal 6 Marla of land in favour of Pipal Singh and 77 Kanal and 14 Marla in favour of Tarlok Singh. On 18th of November, 2023, Hargopal Singh further entered into an agreement to sell the land under lease to the respective lessees namely Pipal Singh and Tarlok Singh. Pipal Singh and Tarlok Singh filed suits for specific performance. Baldev Singh filed suit for possession. All the three suits were tried together. The vendees i.e. Pipal Singh and Tarlok Singh succeeded but only for alternate relief of recovery of money. Suit of Baldev Singh for possession of land was decreed on 24th of December, 2011. Admittedly, the said decrees attained finality till Apex Court. The petitioner herein claims that Baldev Singh entered into an agreement to mortgage the land in her favour on 11th of October, 2010 i.e. prior to date of the decree i.e. 24th of December, 2011. Plaintiff claims that Baldev Singh handed her possession of the suit land at the time of execution of the said agreement to mortgage of land dated 11th of October, 2010.

4. Baldev Singh approached the Court for execution of the decree dated 24th of December, 2011 on 3rd of March, 2012. During pendency of execution, Baldev Singh died on 13th of June, 2014. Respondents herein were impleaded as legal representatives of Baldev Singh. In execution of the decree, the land in question was attached by Revenue Court on 17th of August, 2017 wherein the sons of the present petitioner filed application seeking impleadment as necessary party. The application was dismissed on



18th of May, 2017. Still further the petitioner filed objections under Order 21 Rule 58 CPC before the Revenue Court which was dismissed vide order dated 26th of October, 2017. In the interregnum, the petitioner served legal notice upon the LRs of deceased Baldev Singh asking them to execute the mortgaged deed in performance of the agreement to mortgage dated 11th of October, 2010 and, thereafter, preferred the instant suit accompanied by an application under Order 39 Rule 1 & 2 CPC seeking interim injunction which stands dismissed vide impugned orders.

5. Counsel for the petitioner while assailing the impugned orders submits the in terms of the agreement to mortgage dated 11th of October, 2010, the plaintiff/petitioner is in possession of the suit land. The possession of the petitioner is evident from the electricity bills in her name and, thus, till the final adjudication of the suit, the plaintiff is entitled to protect her possession. The Courts below have erred in ignoring the possession of the plaintiff over the suit land resulting in a perverse order and judgment which needs to be set aside.

6. Per contra, Mr. Saggar, learned Senior Counsel representing the respondents submits that from the application filed by the sons of the plaintiff seeking impleadment in the execution proceedings, it is evident that the plaintiff/petitioner was never put in possession by Baldev Singh, rather their source of possession is Pipal Singh, who has already suffered a decree and is bound to hand-over the possession to the LRs of Baldev Singh. He



thus submits that whole of the tale put-forth including propounding of agreement to mortgage dated 11th of October, 2010 is at the behest of Pipal Singh, who in fact wants to defeat the decree of possession in favour of Baldev Singh.

7. I have heard counsel for the parties and have gone through records of the case.

8. In order to succeed in application filed under Order 39 Rule 1 & 2 CPC, the plaintiff is required to prove the three ingredients i.e.:

- (a) *prima facie* case ;
- (b) balance of convenience, and
- (c) irreparable loss.

9. This Court in the case of '**Ludhiana Improvement Trust vs. Dinesh Kumar and others**' bearing CR No.6696 of 2019 (O&M), while dealing with afore-said essential consideration while grant of temporary injunction held as under :

“9. Order XXXIX CPC provides for grant of temporary injunction. The pre-requisites for decision under Order XXXIX CPC are as follows :

- (i) Prima-facie case :
 - The applicant must demonstrate a prima facie case, meaning that there is a reasonable possibility of the applicant succeeding in the suit.
 - The merits of the case need not be determined at this stage. It is sufficient if the applicant shows that there is a serious question to be tried.



(ii) Irreparable Injury :

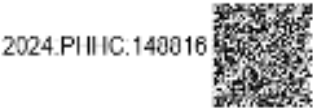
- The applicant must show that he would suffer irreparable injury if the injunction is not granted.
- “Irreparable injury” means harm that cannot be adequately compensated by monetary compensation or that cannot be undone by subsequent legal remedies.

(iii) Balance of convenience:

- The Court must assess whether the balance of convenience lies in favour of the applicant.
- This means that the Court must consider which party would suffer greater harm if the injunction were or were not granted.”

10. In order to show *prima facie* case, the plaintiff relies upon agreement to mortgage dated 11th of October, 2010 stated to be executed by Baldev Singh. It is on the strength of the said agreement to mortgage that the plaintiff asserts possession over the suit land.

11. In the considered opinion of this Court the very fact that Baldev Singh filed execution petition to execute decree dated 24th of December, 2011 on 3rd of March, 2012 and the fact that the land was attached by the Revenue Court on 17th of August, 2017 in execution of the decree for possession in favour of Baldev Singh, is enough to demolish *prima facie* case in favour of the plaintiff. There is nothing on record apart from the bald assertion made by the plaintiff to show as to how the plaintiff claims to be in possession under Baldev Singh who himself was seeking possession praying for execution of decree in his favour. How can she claims possession to



have been handed-over by Baldev Singh. Thus, the Courts below have rightly found that there exists no *prima facie* case in favour of the plaintiff. Apart from the aforesaid fact, the grant of interim injunction in the present suit will have rippling effect leading to obstruction of fruits of decree in favour of Baldev Singh, dated 24th of December, 2011 which has attained finality up to the Supreme Court. Thus, the balance of convenience is also against the present petitioner/plaintiff. There is nothing on record to show that the plaintiff will suffer any irreparable loss in view of the fact that this Court has already found that she has no *prima facie* case in her favour.

- 12. In view of above, the present petition is dismissed.
- 13. Pending application(s), if any, shall also stand disposed off.

November 14, 2024		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes