

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

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CR-2478-2024 (O&M)

Date of decision:24.04.2024

Bhag Singh

... Petitioner

Vs.

Kulwant Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Ankur Bali, Advocate for the petitioner.

...

SUKHVINDER KAUR, J.

1. Instant revision petition has been filed by the petitioner/plaintiff for grant of stay of the operation of judgment and decree dated 28.03.2024 (Annexure P-1) passed by the Civil Judge (Jr. Division), Chandigarh, already challenged by way of first appeal which is pending before the Appellate Court, Chandigarh for 25.04.2024 along with an application for grant of stay under Order 41 Rule 5 CPC read with Section 151 CPC with a further prayer to direct the Appellate Court, Chandigarh to decide his stay application in a time bound manner.

2. The relevant facts for adjudication of the present revision petition are that the petitioner/plaintiff filed a civil suit No.1700 of 2014 titled as 'Bhag Singh Vs. Kulwant Singh' seeking declaration to the effect that the petitioner is the absolute owner in possession of land measuring 0-5 marlas of total land, bearing khasra No.418, Khewat No.302, Khatauni No.316, Hadbast No.222 as well as open site measuring 68 feet x 15 feet falling within *Abadi Deh* of Village Burail, Chandigarh on the

basis of sale deed executed by Jai Singh registered on 02.06.1986 and for mandatory injunction for directing the respondent to demolish the encroachment/boundary wall constructed upon the land in question and grant of permanent injunction for restraining the respondent from raising construction/encroachment upon the aforesaid land. Thereafter, respondent – Kulwant Singh also filed a civil suit bearing Civil Suit No.550 of 2015 titled as 'Kulwant Singh Vs. Bhag Singh' seeking relief of declaration to the effect that the sale deed dated 28.05.1996 which was registered before the Sub Registrar, Chandigarh on 02.06.1986 pertaining to the aforesaid 5 marlas of land is null and void along with mandatory injunction and for grant of permanent injunction. Both the aforesaid suits were consolidated and decided vide a common judgment dated 28.03.2024 by the Civil Judge (Jr. Division), Chandigarh and were partly decreed and it was also held that sale deed be treated for sale of land measuring 0-5 marlas of total land described as bearing Khasra No.418, Khewat No.302, Khatauni No.316, Hadbast No.222 and the petitioner was held entitled to the relief of declaration to the effect that sale deed dated 02.06.1986 executed and registered qua land bearing khasra No.418, Khewat No.302, Khatauni No.316, Hadbast No.222 to be a legal and valid document and it was further held that on the basis of the sale deed executed by Jai Singh registered on 02.06.1986 in the office of Sub Registrar, Chandigarh, the petitioner has become the absolute owner of the aforesaid land and decree of declaration was partly passed in favour of the petitioner qua the aforesaid land. But the petitioner was not held entitled to get the decree for declaration of ownership to the effect that he

is owner of open site measuring 68 feet x 13 feet within the *abadi deh* of Village Burail, U.T., Chandigarh, as the vendor was not the owner of the open area. The relief of mandatory injunction as well permanent injunction in respect of open site measuring 68 feet x 13 feet within the *abadi deh* of Village Burail, Chandigarh was also declined. The petitioner filed an appeal against the aforesaid judgment and decree dated 28.03.2024 before the District Judge, Chandigarh on 15.04.2024. Along with the appeal, an application under Order 41 Rule 5 CPC read with Section 151 CPC for stay of the operation of the judgment and decree dated 28.03.2024 was also filed alleging that if operation of the judgment and decree dated 28.03.2024 was not stayed, then the first appeal filed by the petitioner would be rendered infructuous as the respondent had already started construction over the disputed portion of land.

3. The matter was taken up by the Appellate Court on 16.04.2024. The respondent had filed a caveat petition and had appeared through his counsel on the aforesaid date and sought time for filing reply to the stay application which was allowed and the matter was posted for 22.04.2024 for filing reply to the stay application as well as for arguments and scrutiny thereof. On 22.04.2024, the said appeal along with stay application was simply adjourned for 25.04.2024. In the meanwhile, the respondent is raising construction on the disputed open site. Hence, aggrieved against the same, the revision petitioner/plaintiff has knocked the doors of this Court by way of filing of the present revision petition.

4. Learned counsel for the petitioner has contended that despite the specific averments made in the stay application pending before the Appellate

Court that the respondent was carrying out the construction over the disputed open site, the Appellate Court has not passed any effective order and did not take notice of the fact that if respondent would raise construction on the said open site, then the appeal would be rendered infructuous. While relying upon the decision of the Apex Court in **Mool Chand Yadav & another Vs. Raza Buland Sugar Company Ltd, Rampur & others, 1982 (3) SCC 484**, and **Ashwani Kumar Bindra Vs. Satish Kumar & another, 2018 (2) Law Herald 1253**, the learned counsel has argued that during pendency of the appeal, the operation of an order having serious consequences, must be suspended and that it is not proper exercise of jurisdiction to entertain appeal or keep the appellant on tenterhooks by failing to pass an order immediately on the application traceable to power under Order 41 Rule 5 CPC.

5. During the course of the arguments, learned counsel for the petitioner has submitted that he would be satisfied if the Appellate Court is directed to decide the application filed by the petitioner under Order 41 Rule 5 CPC pending before it within a time bound manner.

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

7. Keeping in view the above, the present revision petition is disposed of with a direction to the Appellate Court, Chandigarh to decide the stay application filed by the petitioner under Order 41 Rule 5 CPC expeditiously as per law preferably within a period of one month from the date of receipt of copy of this order.

8. However, till the disposal of the stay application by the

Appellate Court, status quo regarding construction on the disputed site shall be maintained.

- 9. Disposed of in the aforesaid terms.
- 10. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

24.04.2024
harjeet

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |