

2024:PHHC:083586



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3695-2024

Date of Decision: - 05.07.2024

MADNI MSJID WELFARE SOCIETY

.... PETITIONER

Vs.

SATINDER SINGH AND OTHERS

.... RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Rajesh Gupta, Advocate, for the petitioner.

DEEPAK GUPTA, J.

Petitioner is the plaintiff in Civil Suit bearing *CNR N: PBLD02-002414-2023* titled 'Madni Msjid Welfare Society Vs. Satinder Singh and others' before Id. Civil Judge (Jr. Division), Ludhiana and is aggrieved by the order dated 02.08.2023 (*Annexure P10*) passed by the court, whereby application of the respondents-defendants-counter-claimants under Section 151 CPC for grant of police help for implementation of the order dated 16.05.2023, has been allowed.

2.1 As the paper-book would reveal, plaintiff filed the suit for permanent injunction, by staking its claim over the property measuring 7 kanal 15 marla, out of property measuring 31 kanal 14 marla bearing Khasra No.24 min comprised in Khewat No.238, Khatauni No.297, as per jamabandi for the year 1987-88, situated in Village Laddowal, Tehsil and District Ludhiana (*Hadbast No.96*). It was claimed that said property had been allotted to one Kasim Ali for religious purpose i.e. graveyard of children, which was existing since prior to 1947 and was being used as such ever-since

then and had been declared as a Wakf property. Alleging interference on the part of the defendants (*respondents No.1 to 5 herein*), a decree for permanent injunction was sought to restrain them from doing so.

2.2 Defendants-respondents No.1 to 5 filed written statement, controverting the case of the plaintiff and also filed their counter-claim. It was contended that in the garb of false and frivolous suit filed by the plaintiff, it was trying to interfere in the possession of counter-claimants-defendants over their property measuring 7 kanal comprised in Khewat No.269/262, Khatauni No.341, Khasra No.24, as per jamabandi for the year 2012-13, situated in village Laddowal, Tehsil Ludhiana (West), District Ludhiana, Hadbast No.96. The defendants-counter-claimants claimed to be owner in possession of the said property and alleging threat to their possession on the part of the plaintiff, prayed for a decree of injunction in the counter-claim. They also moved an application under Order 39 Rule 1 & 2 CPC for temporary injunction, in their counter-claim.

2.3 Ld. trial Court vide its order dated 16.05.2023 (*Annexure P6*) observed that it was claimed by the plaintiff i.e., respondent to the counter-claimant that the subject matter of the counter-claim did not relate to the suit property i.e. subject matter of the main suit. Ld. trial Court further found that defendants-counter-claimants were recorded to be owner in possession ever since jamabandi from the year 1982-83 onwards of the land measuring 7 kanal, the subject matter of the counter-claim. After referring to these documents and finding *prima facie* case in favour of the counter-claimants-defendants and other pre-requisites for grant of injunction, the application was allowed and the plaintiff & one another respondent, were restrained from interfering in the possession of the counter-claimants over the property, which

was the subject matter of the counter-claim.

2.4 It is revealed further that on an application (*Annexure P7*) moved by the plaintiff, the trial Court vide its order dated 02.08.2023 (*Annexure P8*) ordered demarcation of the suit property, which was subject matter of the suit as well as the property, which was the subject matter of the counter-claim. SDM of the concerned area along with the Halqa Kanango were directed to conduct the demarcation and file the report.

2.5 In the meantime, the counter-claimants moved application (*Annexure P9*) under Section 151 CPC for granting police help, alleging that the plaintiff-petitioner was not permitting to cultivate the land under the possession of the defendants-counter-claimants despite injunction order dated 16.5.2023. They prayed for getting the order dated 16.05.2023 implemented by providing police help. Said application has been allowed by way of impugned order dated 02.08.2023 (*Annexure P10*).

3. The short submission made by ld. counsel for the petitioner is that once the Court had allowed to conduct demarcation of the suit property, which is the subject matter of the suit, as well as the property, which is the subject matter of the counter-claim, the application moved by the counter-claimants-defendants for providing police help to cultivate the land was not liable to be allowed and that this will hamper the conducting the demarcation.

4. After hearing ld. counsel for the petitioner, this Court does not find merit in the petition.

5. It has been conceded by ld. counsel for the petitioner that order dated 16.05.2023, whereby application under Order 39 Rule 1 & 2 CPC of the respondents-counter-claimants was allowed, has not been set aside till date.

As such, in order to get the said order implemented, if the Court has provided

the police help to the counter-claimants, there should be no objection on the part of the petitioner-plaintiff, particularly when it has claimed the subject matter of the suit property to be different than the subject matter of the counter-claim. Not only this, by way of the impugned order or any other order, the Court has not stopped the concerned Local Commissioner to conduct the investigation and as such, it cannot be said that allowing of the application by way of the impugned order for grant of police aide, will hamper the conducting of the demarcation in any manner.

6. In view of the aforesaid discussion, the present petition is found to be devoid of any merit and as such, the same is hereby dismissed.

05.07.2024

Vivek

Whether speaking/reasoned?

Whether reportable?

Yes

No

(DEEPAK GUPTA)

JUDGE