2024:PHHC:125426

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

CR No.6696 of 2019 (O&M)
Date of decision : 16.09.2024

Ludhiana Improvement Trust ....Petitioner

Versus

Dinesh Kumar and others ....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. M.S. Batth, Advocate for the petitioner.

Mr. Aayush Gupta, Advocate and
Mr. Abhishek Chaudhary, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

Petitioner-Improvement Trust is in revision under Article 227 of the Constitution of India aggrieved of the order dated 26th of August, 2019 passed by the Additional District Judge, Ludhiana whereby the appeal filed by the petitioner stands dismissed and the order passed by Civil Judge (Junior Division), Ludhiana allowing the application filed by the respondents under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 stands affirmed.

2. Respondents/plaintiffs filed suit seeking decree of permanent injunction restraining the defendants from interfering in their possession

over a Shop bearing No.72 measuring 22.50 Sq. Yards situated at Model Town Extension, Ludhiana as detailed in the headnote of the plaint.

3. Plaintiffs claimed that they are owners in possession of the shop on the strength of sale deed bearing Vasika No.8218 dated 4th of November, 2015 whereby the land in question was purchased by them from defendant No.1. It was claimed that defendant No.1 purchased the suit property from defendant No.2 vide sale deed bearing Vasika No.29835 dated 21st of March, 1991. The plaintiffs are running their business under the name and style of M/s Ludhiana Gun House.

4. The suit was resisted by the petitioner/defendant claiming that the shop is in form of Booth No.72 situated in 400 acre development scheme Model Town Extention Part-II. The same was allotted to Bhupinder Singh, defendant No.1 vide allotment letter memo No.9385 dated 2nd of February, 1997. Bhupinder Singh defendant No.1 failed to comply with the terms & conditions of the allotment. The allotment was thereafter cancelled vide resolution No.252 dated 24th of December, 1991. Bhupinder Singh thus had no title vested in him to execute the sale deed in favour of plaintiff on 4th of November, 2015. Along with the suit, the plaintiffs filed application under Order XXXIX Rule 1 and 2 CPC seeking temporary injunction during the pendency of suit to preserve their position. Trial Court came to the conclusion that the plaintiffs having brought on record sale deed dated 14th of November, 2015 and their possession being not in dispute were able to

prove *prima facie* case. Plea raised by defendant-Improvement Trust w.r.t. cancellation of allotment is yet to be proved on record. Holding balance of convenience in favour of the plaintiffs and the fact that losing possessory rights even prior to the adjudication of the suit, will cause irreparable loss to the plaintiffs, Trial Court allowed the application filed under Order XXXIX Rule 1 and 2 CPC granting temporary injunction in favour of the plaintiffs.

5. Aggrieved by the order, the petitioner/defendant-Improvement Trust filed appeal.

6. Appellate Court holding that the possession of the plaintiffs being not in dispute affirmed the findings of the Trial Court.

7. Counsel representing the petitioner while attacking the impugned orders submits that the Courts below erred in allowing the application filed by the plaintiffs under Order XXXIX Rule 1 and 2 CPC relying upon the sale deed executed by the defendant No.1 dated 4th of November, 2015 without appreciating the fact that on the date defendant No.1 executed the sale deed in favour of the plaintiffs, defendant No.1 had no right, title or interest to transfer the same to the plaintiffs. Counsel for the petitioner/defendant No.2 has strongly relied upon the resolution dated 24th of December, 1991 passed by Ludhiana Improvement Trust whereby the allotment stands cancelled.

8. I have heard counsel for the petitioner and have carefully gone through the records of the case.

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. Claim of the plaintiffs is based upon the sale deed dated 4th of November, 2015 in their favour by defendant No.1. Plaintiff(s) claims that defendant No.1 is a title holder under defendant No.2 i.e. the present petitioner on the strength of sale deed bearing Vasika No.29835, dated 21st of March, 1991. Defendant No.2 i.e. the present petitioner in his written statement relied upon resolution dated 24th of December, 1991 claiming that the allotment in favour of defendant No.1 Bhupinder Singh was cancelled and annulled. Sale deed dated 21st of March, 1991 bearing Vasika No.29835 is being denied and is claimed to be forged and fabricated document. Counsel for the petitioner however is not in position to dispute that the plaintiff(s) is in possession of the shop and is carrying on his business from the shop in question. At the same time, there is no explanation worth a word in whole of the written statement filed by the petitioner/defendant before the Trial Court or in the petition before this Court as to how the allottee/his successor-in-interest continued to be in possession of the suit property after 24th of December, 1991 i.e. when defendant No.2/petitioner resolved to cancel the allotment in favour of defendant No.1/Bhupinder Singh. Since continuous possession of the plaintiff over the suit property despite the resolution of cancellation is not disputed and it is also not disputed that the plaintiff(s) is carrying on his business from the property in question, this Court finds that both the Courts below rightly found *prima facie* case in favour of the plaintiff.

11. Plaintiff has produced a copy of licence to show that he is running business from the suit property under license from the Government. As such, his right to livelihood cannot be forestalled prior to adjudication of the controversy in hand by appreciating evidence. Thus, balance of convenience also lies in favour of the plaintiffs.

12. Having already held that the issue relates to livelihood of the plaintiff(s), this Court finds that denial thereof would indeed cause irreparable loss to the plaintiffs which cannot be compensated in terms of money.

13. Thus, on all the three counts, this Court finds that the Courts below rightly allowed the application filed under Order XXXIX Rule 1 & 2 in favour of the plaintiff(s).

14. Finding no merit in the instant revision, the same is ordered to be dismissed.

15. Pending application(s), if any, shall also stand disposed off.

September 16, 2024 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes

Whether reportable : Yes