

139 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6378-2023 (O&M)

Date of decision: 30.01.2024

Karamjit Singh

..Petitioner

Versus

Harpal Singh and others

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms.Hanima Grewal, Advocate for the petitioner

Mr. Jatinder Singla, Advocate for respondent no.1 and 2

ANIL KSHETARPAL, J (Oral)

1. In this revision petition, the plaintiff assails the correctness of the order passed by the trial court while dismissing his application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 for grant of temporary injunction, which, in appeal, has been affirmed by the First Appellate Court.

2. The petitioner herein is the son of defendant No. 1 whereas defendant No. 2 is plaintiff's brother. Originally, the suit property was owned by Sh.Inder Singh, uncle of the plaintiff Sh. Karamjit Singh. On 11.02.2016, Sh.Inder Singh transferred the property in favour of Sh. Harpal Singh, the plaintiff's father, who, in turn, transferred the property by way of a registered transfer deed dated 11th March, 2016 in favour of the plaintiff. Subsequently, Sh. Harpal Singh, the plaintiff's father challenged the correctness of the aforesiad transfer deed before the Tribunal constituted under the the Maintenance and Welfare of Parents

and Senior Citizens Act, 2007, in which the same was set aside, however, a writ petition before the High Court to challenge the correctness of the aforesaid order is pending. In this writ petition, an interim order has also been passed.

3. The plaintiff also relies upon the deed of settlement executed between members of the Gram Panchayat. The petitioner claims that the entire agricultural field opposite to Thalesan Road Factory was handed over to him in the aforesaid settlement arrived at on 17th November, 2017, which was not only signed by Sh. Harpal Singh, his father but also his brother Sh. Taranjit Singh.

4. Both the courts have dismissed the plaintiff's application for grant of injunction on the ground that the parties are co-sharers and from the contents of the settlement deed, it appears that the same would be implemented in the near future.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

6. Learned counsel representing the petitioner submits that the petitioner has a prima facie case in his favour because there is a transfer deed executed by Sh. Harpal Singh in favour of the petitioner and in a settlement arrived at before the respectable members of the Gram Panchayat, it is recorded that the possession of the suit property has been delivered to the petitioner.

7. On the other hand, the learned counsel representing the respondents contends that in the deed of settlement dated 17 November,

2017 specific Khasra numbers have not been given and the deed of settlement is not signed by all the co-sharers. He submits that the aforesaid deed of settlement has neither been acted upon nor reflected in the revenue record.

8. This Court has considered the submissions made by the learned counsel representing the parties.

9. It is not disputed by the learned counsel representing the parties that in the writ petition filed by the petitioner there is an interim protection in favour of the petitioner with respect to the implementation of the order passed by the Tribunal. As already noticed, at this stage, the Court is required to apply three tests:-

a) Prima facie case;

b) balance of convenience;

c) irreparable loss and injury, which the plaintiff is expected to suffer if injunction is not granted.

10. It is evident that the plaintiff (petitioner) has a prima facie case because the suit property has been transferred in his favour by his father by a registered deed. The possession of the petitioner is proved in view of the settlement deed dated 17 November, 2017 wherein dispute with regard to the apportionment of the property between Sh. Harpal Singh and his two sons namely Sh. Taranjit Singh and Karamjit Singh was settled. This deed of settlement is signed by Sh. Taranjit Singh, Sh. Harpal Singh, Sh. Karamjit Singh, apart from Sh. Harjinder

Singh, Sh. Amarjeet Singh and Sh. Sarabjit Singh, Panches and Sh. Magar Singh, Nambardar.

11. The property has been identified by its location on the Thalesan Road. It has been identified that the entire field opposite Thalesan Road Factory has been given to Sh. Karamjit Singh.

12. As regards the objection of the learned counsel representing the respondent that the settlement deed has not been signed by all the co-sharers, it may be noted here that the dispute inter se amongst the family members was settled. The remaining co-shares are not interfering in the plaintiff's possession. They are also not party to the suit. Hence, the objection is without substance.

13. Moreover, the argument of the learned counsel that the aforesaid settlement has not been acted upon is without substance because from the bare reading of the settlement deed dated 17 November, 2017, it is evident that dispute of apportionment of the property amongst the family members was settled amicably. Each member of the family was given a specific portion. Sh. Taranjit Singh was given a separate portion, which is adjacent to the land of Sh. Angrej Singh and Sh. Jeet Singh. Not only the agricultural land was apportioned but even the residential and commercial properties were apportioned.

14. Keeping in view the aforesaid facts, both the courts have erred in dismissing the petitioner's application for the grant of temporary injunction.

15. Hence, the revision petition is allowed. The respondents are restrained from interfering in the plaintiff’s possession till disposal of the suit. The trial court is requested to make sincere endeavours for expeditious disposal of the suit. Needless to observe that while deciding the suit the trial court will not be influenced by the observations made by this Court while passing the aforesaid order.

16. All the pending miscellaneous applications, if any, are also disposed of.

30.01.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE