(1995) 09 P&H CK 0020

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 1627 of 1995

R.C. Sood Co.		APPELLANT
	Vs	
R. Kant and Company and Another		RESPONDENT

Date of Decision: Sept. 14, 1995

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2

Citation: (1997) Supp CivCC 52 : (1996) 113 PLR 559

Hon'ble Judges: V.K. Jhanji, J

Bench: Single Bench

Advocate: M.L. Sarin and Hemant Kumar, for the Appellant; H.L. Sibal, R.C. Setia O.P. Sharma and Sidharth Sarup, for the Respondent

Final Decision: Dismissed

Judgement

V.K. Jhanji, J.
This is plaintiffs revision petition directed against the orders of the Courts below dismissing the application of the plaintiff for grant of ad-interim injunction.

2. The right-holders of village Anangpur own undivided land measuring 4583 acres. The plaintiff as well as defendant companies who are builders and colonisers are engaged in the business of land development. Plaintiff company (hereinafter referred to as plaintiff) owns 230 acres out of the undivided-share which it is alleged to have purchased during the year 1982. Defendants R. Kant and Company (hereinafter referred to as defendants) own 430 acres which they purchased between the year 1975 to 1977. Defendants are in exclusive possession of Khasra Nos. 9 to 16 whereas the plaintiff is not in possession of any parcel of land. Suit of the plaintiff is for restraining the defendants from raising construction and sell plots before the land is partitioned by metes and bounds. Suit has been filed on the allegations that the land in village Anangpur is adjacent to the Union Territory of

Delhi and in close proximity of Suraj Kund resort, Rajhans Hotel and other residential colonies like Charmwood village, Eros Garden, Green Field colonies and Deluxe Hotel Oasis and the defendants who claim to be in possession of khasra Nos. 9 to 16 being co-sharers have no right to sell, transfer or raise construction over the joint land. Along with the suit, plaintiff filed an application for ad-interim injunction for restraining the defendants from raising any construction, carrying out any development activity by laying roads, water lines, sewerage lines etc. or selling specific plots and from doing any other acts detrimental to the common and joint use of the suit land. Defendants have contested the suit and also the application for ad-interim injunction inter-alia on the grounds that; the defendants are in actual physical possession of the land comprised in khasra Nos. 9 to i6; the defendants have obtained exemption from the State of Haryana for the establishment of a film studio and Allied Complex and are required to complete the development work within a period of five years, i.e. by July, 1995; the defendants have furnished a bank guarantee to the tune of Rs. 2.5 crores in favour of State Government and have already spent nearly Rs. 3 crores on the development and for purchase of machinery in the implementation of project by laying of roads etc.; more than 450 people have already booked their plots; and the present suit and the application have been filed to stall the development work of the project in question. Defendants have also averred that previously too, certain persons claiming to be co-sharers had unsuccessfully tried to dispossess the defendants and that matter came to be decided in favour of the defendants.

2. The trial Court on the basis of pleadings and the material brought on record dismissed the application and the appeal against the said order has been dismissed by the first appellate Court.

3. Mr. M.L. Sarin, Sr. Advocate, counsel for the plaintiff has contended that the Courts below have erred in law in holding that the finding given in the previous proceedings filed by other right-holder/co-sharers are binding on the present plaintiff. According to the learned counsel, defendants though may be in possession but have no right to change the nature and character of the land, nor can they raise any construction before the land is partitioned by metes and bounds. In order to show that in law what are the rights and liabilities of a co-sharer, he has cited judgments in Parsini @ Mono v. Mohan Singh and Ors. 1982 PLJ 280, Bhartu v. Ram Sarup, 1981 PLJ 204, Om Parkash and Ors. v. Chahaju Ram 1992 2 102 PLR 75, Daulat Ram v. Dalip Singh and Ors., 1989 (1) RLR 523 and Sant Ram Nagina Ram Vs. Daya Ram Nagina Ram and Others, .

4. In answer to these submissions, Mr. H. L. Sibal Sr. Advocate, counsel for the defendants has contended that the plaintiff is guilty of suppression of material facts and therefore, not entitled to any relief. He contended that the State of Haryana has exempted the land in possession of the defendants from the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 with certain

conditions for establishment of a film studio and Allied Complex on which the defendants till date have spent Rs. 8.11 crores and have also furnished a bank guarantee for Rs. 4.21 crores in favour of Secretary, Town and Country Planning, Haryana for the due performance of the terms and conditions of the exemption order. In case ad-interim injunction is granted, defendants shall suffer an irreparable loss.

5. In the suit what has been questioned by the plaintiff is the right of the defendants to sell the plots from the land in their possession and to raise construction. Learned counsel for the plaintiff has fairly conceded that a co-sharer in established possession of'' any portion of an undivided holding, not exceeding his own share, cannot be disturbed in his possession until partition and also that a co-sharer who is in possession of such portion of a joint holding can transfer that portion subject to adjustment of the rights of the other co-sharers therein at the time of partition. The concession of the counsel is based on the law laid down by the judgments cited by him. The remaining claim of the plaintiff is on the ground that a co-sharer who is in exclusive possession cannot be permitted to raise construction on the land in his possession as every other co-sharer is also a joint owner of every inch of entire joint land holding till the same is regularly partitioned by metes and bounds. The only question, thus, to be determined in this petition is whether the defendants are to be restrained from raising construction on the land in their possession till the land is partitioned by metes and bounds, meaning there- by whether the plaintiff is entitled to the injunction prayed for.

6. Principles governing the grant of temporary injunction are now well-settled and in short it can be summarised that before grant of injunction the Court must be satisfied that the party praying for relief has a prima-facie case and balance of convenience is in his favour and that refusal to grant relief would cause him an irreparable loss. If the party fails to make out any of the three ingredients, he would not be entitled to injunction and the Court would be justified in declining to issue injunction. Even where all the three ingredients for grant of temporary injunction are satisfied the relief can still be refused for other reasons. Delay on part of a person claiming relief is one such reason. The Apex Court in State of Orissa and Another Vs. Dr. Pyari Mohan Misra, relying upon a decision of Supreme Court in Dalpat Kumar and Another Vs. Prahlad Singh and Others, has held that:

"the phrases "prima facie case", "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation but words of width and elasticity, intended to meet myriad situations presented by men''s ingenuity in given facts and circumstances and should always be hedged with sound exercise of judicial discretion to meet the ends of justice. The court would be circumspect before granting the injunction and look to the conduct of the party, the probable injury to either party and whether the plaintiff could be adequately compensated if injunction is refused. The existence of prima-facie right and infraction of the enjoyment of his

property or the right is a condition for the grant of temporary injunction. Prima-facie case is not to be confused with prima-facie title which has to be established on evidence at the trial. Only prima-facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The court further has to satisfy that non-interference by the court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs, protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The balance of convenience must be in favour of granting injunction. The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the court considers that pending the suit, the subject matter should be maintained in status-quo, an injunction would be issued. The court has to exercise its sound judicial discretion in granting or refusing the relief of ad-interim injunction pending the suit."

In the present case, both the Courts below have refused to exercise discretion in favour of the plaintiff primarily on two grounds; (i) suit filed by the plaintiff is prima-facie barred by principles of res-judicata; and (ii) in case interim injunction is granted in favour of the plaintiff, the defendants shall suffer an irreparable loss. As regards the ground that the suit is prima-facie barred by principles of res judicata, I am of the view that although the plaintiffs counsel is right in contending that the findings recorded in the previous proceedings are not barred by principles of res-judicata but nevertheless the findings are relevant for taking note of the assertion of rights by the defendants to remain in possession and raise construction. In this context, it is relevant to notice the previous proceedings which came to be filed by the defendants and also by some of the right-holders of the village. In March, 1982, R. Kant as proprietor of defendant No. l apprehending dispossession from some of the right-holders filed suit for permanent injunction restraining them from interfering in his possession. Before the trial Court could decide the application for temporary injunction, Jiwan Singh and some others, residents of the village, filed a suit on 17.4.1982 for permanent injunction against the defendants. Suit was also accompanied by an application for grant of ad-interim injunction. The allegation of Jiwan Singh and others in the suit was that they were proprietors of the village and the suit land being Shamilat land could not have been transferred to the defendants, nor the defendants have any right to change the nature and character of the land. The first appellate Court found the defendants to

be in possession of khasra Nos. 9 to 16 and accordingly, Jiwan Singh and others were restrained from interfering in possession of the defendants. However, defendants were restrained from changing the nature of the suit land. Two revision petitions came to be filed; one by Jiwan Singh and others and the other by defendants. This Court found the defendants to be in actual physical possession of khasra Nos. 9 to 16 which the defendants had purchased from the right-holders who in turn were in actual physical possession. Revision petition filed by Jiwan Singh and others was dismissed while revision petition filed by the defendants was allowed and the order whereby the defendants were restrained from changing the nature of the suit land, was set aside.

7. The facts of this case further demonstrate that out of the undivided property of 4583 acres, plaintiff owns 230 acres whereas the defendants are owners in possession of 430 acres. According to the own showing of the plaintiff, the plaintiff purchased the land in 1982 from those right-holders who were not in possession whereas the defendants had purchased the land between the years 1975 to 1977. At the time of purchase, it was to the knowledge of the plaintiff that defendants are in actual physical possession of khasra Nos. 9 to 16 arid being a rival in trade must have known'' that the defendants would use the land for developing it as colony, but despite this no steps whatsoever were taken to get the land partitioned. It is to be noticed that the defendants who had applied for exemption of land from the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 were granted exemption by the State Government on 17.4.1984 on certain terms and conditions. Since there was no order restraining the defendants from raising construction over the suit land, the defendants started developing the land in their possession. The project undertaken by the defendants as per terms and conditions settled with the State Government is required to be completed within five years from 27.3.1992. Defendants deposited the service charges with the Government during the period, September, 1990 to May, 1994. The defendants in the written statement and the reply to the application for injunction have averred that they have spent Rs. 3 crores on development work but at the time of motion hearing of the petition, counsel for the defendants submitted that for metalling of roads and paving of footpaths, turfing and plantation with trees of open spaces, street-lighting, adequate and wholesome water-supply, sewers and drains both for storm and sullage water and for the purchase of machinery the defendants till date have spent a sum of Rs. 8.11 crores which is in addition to a bank guarantee in the sum of Rs. 4.21 crores in favour of Secretary, Town and Country Planning, Haryana, and in case of breach of any terms and conditions the bank guarantee is liable to be forfeited. It is also clear from affidavit dated 31.5.1995 filed in this Court that the plaintiff had the knowledge of the exemption which had been granted to the defendants. In the affidavit plaintiff has admitted that defendants were granted exemption and they were required to submit the lay-out plans which in turn were required to be approved by the Secretary, Town and Country Planning, Haryana.

Plaintiff has also admitted that lay-out plan was submitted on 3.9.1990 and approved on 10.4.1991 for the purchase of service plan and estimates, besides admitting the submission of estimates of internal development charges on 4.6.1991 and approved on 31.3.1992, execution of agreements in March, 1992 and also submission of bank guarantee contemplated under the exemption letter. What is being disputed is assertion of the defendants that they have spent Rs. 8.11 crores. At the time of motion hearing this Court, on finding that Additional District Judge, Faridabad in his judgment has noticed the argument of counsel for the defendants that more than Rs. 4 crores have been spent on the development of the land for being utilised for residential and other building purposes, directed the defendants to file an affidavit indicating the amounts spent on the development from the year 1984 till date giving the break-up per year. Defendants in their affidavit dated 27.5.1995 have stated that the total development and other project expenditure made by them for financial year between 1983 to 15th May, 1995 are Rs. 8.11 crores and in addition to it, defendants have furnished bank guarantee of Rs. 4.21 crores in favour of Secretary, Town and Country Planning, Haryana, i.e. on 8.7.1992, 29.6.1993 and 27.9.1994, Rs. 99,50,000/-, Rs. 1,49,25,000/- and Rs. 1,72,25,000/- respectively (totalling Rs. 4,21,00,000/-) were deposited as bank guarantee. Although the plaintiff has filed counter affidavit controverting the assertion made by the defendants and another affidavit has come to be filed by the defendants giving the break-up of the money spent towards the project but it is clear from a reading of the affidavits that defendants have spent substantial amount on the development of the land or the project which .they have undertaken on the basis of an agreement entered into with the State Government. Submitting of a bank guarantee in the sum of Rs. 4.21 crores also stands established on record.

8. It has also come on the record that the plaintiff came to know about the sale of plots on 14.6.1993 when a public notice appeared in the newspaper ''Hindustan Times''. Plaintiff also gave an advertisement on 4.8.1993 in ''Hindustan Times'' for giving warning to the intending purchasers not to purchase the plots as the land is undivided property of the co-sharers. Plaintiff has not given any explanation as to why it kept quiet till 27.7.1994, i.e. when the present suit was filed and allowed the defendants for all this period to raise construction and sell plots. Filing of the suit after an unreasonable delay obviously is with an oblique motive which became apparent when during the course of hearing of revision petition, counsel for the plaintiff contended that defendant be directed to part with a portion of the land in their possession. When the counsel was asked to elaborate he contended that any owner desiring to convert his land into a colony has to make an application u/s 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 and on receipt of the application, the Director before giving the licence, apart from other things, is required to enquire into the extent and situation of the land. Plaintiff who admittedly is not in possession cannot apply for licence unless it comes in actual physical possession of the land which is possible only on partition. Concededly,

plaintiff till date has not taken any steps to get the land partitioned. At this stage, plaintiff who is co-owner to the extent of only 230 acres cannot say with certainty that on partition of 4583 acres it would get its share only in khasra Nos. 9 to 16. Rather, the possibility cannot be ruled out that on partition, plaintiff may not get an inch of land in khasra Nos. 9 to 16. In the joint holding of 4583 acres, apart from plaintiff there are other co-sharers but none of them has come forward to seek an order of restraint. In the event of grant of injunction, not only the amount which has been spent on the internal development would go down'' the drains but the persons whose rights are going to be adversely affected would be the plot-holders to whom plots were sold by the defendants before filing of the suit, but have not been made parties to the suit. Thus, in the facts and circumstances of this case, the irreparable loss, if any, which the plaintiff may suffer due to denial of injunction would be negligible compared to the loss which the defendants would suffer on grant of injunction. In my considered view, grant of injunction will not only put the defendants to hardship but shall also be oppressive and cause them an irreparable loss. Plaintiff, therefore, is not entitled to the grant of injunction. It is however, made clear that any observation given in this order shall not be construed as an expression on the merits of the case.

9. For the reasons recorded above, this revision petition fails and is accordingly dismissed. No costs.