

(1996) 09 P&H CK 0028

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3126 of 1995

Bharpur Singh and
Others

APPELLANT

Vs

Pritam Kaur and
Others

RESPONDENT

Date of Decision: Sept. 24, 1996

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 115

Citation: (1997) 115 PLR 204 : (1996) 1 RCR(Civil) 415

Hon'ble Judges: Sarojnei Saksena, J

Bench: Single Bench

Advocate: Arun Jain and Ashok Jindal, for the Appellant; M.L. Jhanji and A.P. Mittal, for the Respondent

Final Decision: Allowed

Judgement

Sarojnei Saksena, J.

Petitioner-plaintiffs filed the civil suit for permanent injunction against the defendant-respondents praying that the defendants be restrained from dispossessing the plaintiffs forcibly and illegally or otherwise interfering in any manner in the peaceful possession of land measuring 154 Bighas 4 Biswas, which is in their possession.

2. Brief facts of the case are that the plaintiff-petitioners pleaded that Basant Kaur was owner of the disputed land, it was demised to the plaintiffs at the rate of Rs. 500/- per annum as Chakota, since then they are in its cultivating possession as tenants under Basant Kaur and after her death under her daughter Dalip Kaur to the extent of 1/3rd share on account of registered will executed by Basant Kaur in their favour. Inderjit Singh also executed a will in favour of respondent-defendants 1 to 3 and Bhupinder Kaur (now deceased) and represented by

respondent-defendants 4 to 6. Dalip Kaur also died and was succeeded by respondents 1 to 3 and Bhupinder Kaur (now deceased) and represented by respondent-defendants 4 to 6. Dalip Kaur also died and was succeeded by respondents 1 to 3 and Bhupinder Kaur (now deceased), her daughter. Thus, respondent-defendant's have become owners of the suit land. The said ownership is subject to decision of Regular Second Appeal No. 1627 of 1990, which is pending in the High Court. Plaintiff-petitioners pleaded that they are in continuous occupation of the suit land as tenants for the last 40 years and their possession is continuous, uninterrupted and is protected by the Tenancy Laws. They also pleaded that formerly Dalip Kaur etc. filed a suit for ejectment as well as for recovery of rental arrears against the plaintiff-petitioners in the Court of Assistant Collector Ist Grade, Malerkotla, which was decreed by the learned Collector on 27.10.1975 holding that plaintiff-petitioners are liable to pay Rs. 1500/- as arrears of rent for the last three years, landlord's claim for their ejectment was declined. Thus, defendant-respondents filed appeal before the Commissioner; Patiala, which is still pending as the question of title is yet to be decided in the aforementioned Regular Second Appeal.

3. Plaintiffs also pleaded that respondent-defendants filed the suit against the plaintiffs for the recovery of Rs. 1500/- as arrears of rent for three years and ejectment of the respondents from the suit land in the Court of Assistant Collector I Grade, Malerkotla. The said suit was stayed by the Collector vide his order dated 29.9.1986. In the Civil suit, which Dalip Kaur etc. filed against these plaintiff-respondents in the Civil Court of Dhuri, that suit was decided on 7.6.1982 by Mr. S.K. Garg, Sub Judge I Class, Dhuri in favour of Dalip Kaur and she was declared to be the owner of 2/3rd share and her daughters were declared to be the owners of remaining 1/3rd share of the suit land. About that judgment, Regular Second Appeal No. 1627 of 1990 is pending in the High Court. Along with suit, they also filed the petition under Order 39, Rules 1 and 2 CPC seeking ad interim injunction. This petition was contested by defendant-respondents. They filed reply wherein they averred that plaintiffs are not entitled to get relief of ad interim injunction as they have suppressed material facts. They pleaded that dispossession of the plaintiffs was stayed by the Hon'ble High Court on 14.2.1991. They filed the petition to vacate the stay order by filing Miscellaneous application No. 1821 CII of 1993 which was decided on 19.10.1993 and the order dated 14.2.1991 was modified. In view of order of the High Court, they filed a petition in the Court of Additional Senior Sub Judge, Dhuri for determination of mesne profit, which fixed the mesne profits at Rs. 20 lacs. Plaintiffs filed the civil revision against that order before the High Court wherein the mesne profits were fixed at Rs. 12 lacs and these plaintiffs were directed to furnish security within two months but they failed to deposit any security.

4. When these facts were placed before the lower court, the lower court dismissed their injunction petition. Plaintiff-petitioners filed appeal before the Additional District Judge, Sangrur. The appeal was also dismissed on the ground that plaintiffs

have suppressed the aforementioned orders passed by the High Court and further they have not complied with the order of the High Court dated 19.10.1993 and failed to furnish security.

5. Plaintiff-petitioners' learned counsel contended that since they are in possession of the disputed land and there was no order or decree of dispossession against them, hence, during the pendency of Regular Second Appeal No. 1627 of 1990, they never filed any application staying their dispossession. They only filed the civil Miscellaneous petition No. 2429-CII of 1990 praying that the respondents be restrained from alienating the disputed land. That order was passed in their favour by the High Court on 18.9.1990. By the order dated 14.2.1991, the High Court only passed the order that "stay to continue". Thereafter, respondent-decree-holders filed civil miscellaneous petition No. 1821-CII of 1993 in the Regular Second Appeal No. 1627 of 1990 alleging that plaintiff-judgment-debtors have not paid mesne profits that they are in possession of the disputed land since long and on this petition, the High Court passed the order on 19.10.1993 modifying the order dated 14.2.1991 to the extent that dispossession of the appellants shall remain stayed provided they furnish adequate security for mesne profits to the satisfaction of the trial Court after notice to the respondents. Later on, when the plaintiff-appellants failed to furnish security, the stay granted on 19.10.1993 was vacated. Thus, according to him, there was no question of staying their dispossession as they never made such a prayer.

6. Plaintiff-petitioners' learned counsel contended that the courts below were not in a position and therefore, they did not re-appreciate the aforementioned order passed by the High Court and on that ground, their injunction petition was dismissed.

7. Respondent-defendants' learned counsel contended that they have obtained decree against the plaintiff-petitioners, that decree is affirmed by the First Appellate Court and during the pendency of the second appeal, they obtained the stay order from the High Court, which was granted on the condition of furnishing security. As they failed to furnish security, the stay was vacated by the High Court. Thus, under these circumstances, these plaintiff-petitioners have no right to file separate suit to obtain ad interim injunction against these respondent-decree-holders so far as dispossession of the suit land is concerned.

8. Today, Regular Second Appeal 1627 of 1990 is also decided and the appeal is dismissed. Thus, the decree which was passed in favour of defendant-respondents stands affirmed.

9. In the aforementioned decree, there was no prayer for the delivery of possession of the disputed land. Hence, there is no order to that effect. Admittedly, plaintiff-petitioners are in possession of the disputed land as tenants of decree-holders. Since, there was no decree for delivery of possession, while in the

aforementioned Regular Second Appeal, they never filed any petition praying for stay of their dispossession. Their only prayer was that respondents be restrained from alienating the suit land till the disposal of the aforementioned Regular Second Appeal. Their prayer was granted by the order dated 18.9.1990. On 14.2.1991 appeal was admitted and the order was passed that stay to continue. Respondent-decree-holders filed Civil Miscellaneous Petition No. 1821-CII of 1993 and prayed that since the judgment-debtors are in possession of the disputed land and are not paying even mesne profits, the stay order be modified to the extent that they should pay mesne profits. This petition was disposed of vide order dated 19.10.1993 and these plaintiff-petitioners-judgment-debtors were ordered to furnish adequate security for mesne profits. As these plaintiff-petitioners-judgment-debtors did not furnish security, the order dated 19.10.1993 was vacated on 17.1.1995.

10. Thus, it is apparent that these plaintiffs petitioners never sought ad interim relief from the High Court for staying their dispossession. The stay was granted against alienation, but when subsequently the decree-holders filed Civil Miscellaneous Petition No. 1821-CII of 1993 that order was modified and by oversight the word dispossession was mentioned therein.

11. But even plaintiffs should have placed all these facts before the Courts below because the Courts below are bound by the orders of the High Court. It is also a fact that without paying any mesne profit for the last so many years, the plaintiff-petitioners are in possession of the disputed land but the plaintiff-petitioners' learned counsel has still not referred to their application, which they filed in the Court of Shri N.K. Goyal, Sub Judge I Class, Dhuri, for passing an order specifying the amount for mesne profits. Vide order dated 19.4.1994 the Sub Judge I Class, Dhuri, directed the plaintiff-petitioners to furnish security to the tune of Rs. 20 lacs in compliance of the High Court order dated 18.3.1994. They filed revision against this order and vide order dated 25.10.1994 the High Court modified the trial Court's order and directed them to furnish security for Rs. 12 lacs within two months. Plaintiff-appellants have not complied with this order and therefore on 17.1.1995 the High Court vacated the stay order dated 19.10.1993. It is also pertinent to note that as these plaintiff-petitioner-appellants never filed the petition seeking stay of their dispossession, they could have sought clarification or modification of the High Court's order to that extent, but they kept quiet as the order was passed in their favour and they further disobeyed the order of the High Court by not furnishing security for the payment of mesne profits. It would have been better if they had referred to these orders in their plaint/petition but mere omission to state them in the plaint cannot be regarded as sufficient for disentitling them from claiming this direct discretionary relief. But the legal position is evident that there is no decree or order in favour of the decree-holders to dispossess the plaintiff petitioners from the suit land. No doubt, plaintiff-petitioners' Regular Second Appeal No. 1627 of 1990 is dismissed today, but that will not effect the merits of this revision because in that decree also, relief of possession was neither

sought nor was granted. Plaintiff-petitioners are only seeking the relief that the decree-holders should not dispossess them except in accordance with law. The lower Courts could not have granted that relief to the plaintiff-petitioners in view of the aforementioned orders of the High Court, which were not pleaded. The decree-holders can take possession of the disputed land only by making appropriate prayer before the appropriate forum and not by force.

12. Accordingly, this revision petition is allowed, the impugned orders are set aside; petition filed under Order 39 Rules 1 and 2 is allowed. Respondent-decree-holders are hereby restrained from dispossessing the plaintiff Petitioners forcibly except in the due course of law.