

Malkeet Singh and Others Vs Yadwinder Singh and another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 21, 2011

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 39 Rule 1, Order 39 Rule 2

Citation: (2011) 164 PLR 31 : (2012) 2 RCR(Civil) 107

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

A.N. Jindal, J.

This petition assails the order dated 20.11.2010 (Annexure P-7) passed by the Civil Judge (Junior Division), Ferozepur, providing police help to enforce the order dated 26.05.2010 (Annexure P-3) passed under Order 39 Rule 1 and 2 CPC.

2. The factual background of the case is that the petitioners are joint owners in possession of the land measuring 64 Kanals 4 Marias, situated in

village Bhangat, Tehsil and District Ferozepur. The petitioners had filed a suit for declaration challenging the alleged sale deed dated 22.11.2007

propounded by the respondents in respect of the land measuring 11 Kanals and sale deed dated 26.11.2007 in respect of the land measuring 7

Kanals 3 Marias and sale deed dated 21.11.2007 regarding 7 Kanals 2 Marias of land. In the said suit, on the application filed by the petitioners

under Order 39 Rules 1 and 2 CPC, the trial Court granted injunction, restraining respondents from disposing of the suit land in any manner. The

appeal against the said order filed by the petitioner is pending adjudication.

3. Thereafter, the respondents also filed a suit for permanent injunction, which was contested by the petitioners. In the said suit, on 26.05.2010,

the trial Court had granted ad-interim injunction restraining the petitioners from dispossessing the respondents from the suit land, except in due

course of law. The appeals against the orders of injunction passed in both the suits are still pending. Thereafter, the respondents had filed an

application for providing the police assistance to enforce the order of injunction dated 26.05.2010 on the ground that despite the order of

injunction, the petitioners are still threatening to dispossess them from the suit land, which was allowed by the trial Court.

4. Arguments heard. Record perused.

5. There is no denying a fact that an order dated 26.05.2010 restraining the respondents from interfering in possession of the petitioners was

passed, against which the appeal is still pending. Both the parties are claiming possession over the suit land. There is no proof of such an overt act

allegedly committed by the respondents which may amount to violation of the order of injunction and enable this Court to draw an inference that

the respondents had intruded over the suit land. It also cannot be said to be incorrect that the respondents have also filed a suit against the

petitioners to protect their possession and the trial Court had granted injunction on 26.05.2010 restraining the petitioners from interfering in their

possession over the suit land. The said order is also under adjudication in appeal.

6. Consequently, the crux of the matter is that both the parties are claiming possession over the suit land and both of them have filed different suits

against each other and they were granted injunction and those orders have not attained finality. The counsel for the respondents have also not

denied the fact that no contempt petition has been filed for violation of the grant of injunction, which was the appropriate remedy in case of breach

of injunction. Rather the tendency of the appeals against these orders suggests an inference that still it could not be determined as to which party is

in actual possession over the suit land. The order of injunction is only a restraint order and request for providing police help to implement such

order would directly indicate that the party under the garb of police help, wants to earn the fruits of land. The factum of possession is still to be

determined by the Court on the evidence to be led by the parties. At the same time, providing of police help to implement such ad interim order

may lead to serious consequence and dislodge the person in lawful possession. Similar observations were made by this Court in *Kawaljit Kaur and*

another v. *Gautam Cheema and others*, 2007 (2) P.L.J. 315, wherein it was observed as under:

10. Therefore, I am of the opinion that the order passed by the learned trial Court providing police help to the plaintiffs at this stage is premature as

in the facts and circumstances of the case the question of possession is required to be examined by the civil Court on the basis of evidence led by

the parties. *Prima facie*, the conduct of proceedings weighs heavily against the plaintiffs to infer that actual physical possession is not with the

plaintiffs and, therefore, under the garb of police protection, the plaintiffs want to gain entry into the suit land only because ad interim order has

been passed by the learned trial Court. Providing of police help to implement ad interim order may lead to serious consequences. Once the order

has been passed, it is the duty of the police authorities that the parties implement the said order so as to maintain law and order. But the interim

order passed on the basis of, prima facie, appreciation of documents cannot be conclusive to hold that the plaintiffs must be provided police help

even if it amounts to change of actual physical possession.

7. As a matter of fact, since the question of possession is the only question to be determined during the trial, therefore, at the very initial stage, it

cannot be said finally that as to which party is in possession over the suit property. Secondly, if any violation of the injunction order is committed by

a party, then the only course is to move for claiming remedy for breach of injunction and not to seek police help. Even if, it is proved that the

plaintiffs have been dispossessed during the tendency of the suit and during the period the order of injunction was in operation, then the Court in its

discretion while deciding the factum of possession, could order restoration of the possession without any further amendment in the plaint. However,

in an appropriate case of overt act indicating the violation of the order of ad-interim injunction, the Court could order to undo the wrong and

restore the original possession, but police help cannot be provided merely on account of apprehended danger of violation of injunction. Similar

observations were made in a case *Meera Chauhan v. Harsh Bishnoi and another*, 2007 (2) CCC 1, wherein it was observed as under:

...It is also well settled that when parties violate order of injunction or stay order or act in violation of the said order the Court can, by exercising its

inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the

police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police

protection for implementation of such order.

8. But, in the instant case, no allegations have been that the injunction order has been violated. The case of the parties is that they have moved to

the Appellate Authority against the orders passed by the Court with regard to the injunction qua the claim of possession raised by both the parties.

9. Counsel for the petitioners has relied upon the judgments in *Thakur Dass v. Harijan Sudhar Samiti*, 1995 (1) CCC 410, *Prithvi Raj v. Shamsher*

Singh, 2002 (3) CCC 82 and *Meera Chauhan's case* (supra).

10. As regards *Meera Chauhan's case* (supra), I have already observed that implementation of the order of injunction could be made in violation

thereof and not prior to that. If the trial Court finds that the party, who had forcibly entered in the land, was not in possession of the suit property at

the time of filing of the suit and had entered into possession in violation of the order, then the Court could direct restoration of the possession.

Similarly, in Thakur Dass's case (supra), if any construction has been raised by the defendant in violation of the injunction order, then the Court

could direct enforcement of the order and to restore the property into its original position as it was at the time of filing of the suit. In Prithvi Raj's

case (supra), the order of injunction was in operation and there was no appeal against the said order and the plaintiff had come with a specific

instance that the petitioner does not allow him to harvest the paddy crop. In that situation also, the Court did not order implementation of the

injunction order, but had directed the Additional Civil Judge to decide his application for seeking police help.

11. Under these circumstances, the aforesaid judgments are on different facts and are not applicable to the facts of the present case. Consequently,

this Court observes that the impugned order deserves to be reversed.

12. Resultantly, this petition is accepted. The impugned order dated 20.11.2010 (Annexure P-7) is set aside and the application for providing

police help for implementation of the order is dismissed.