

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.1649 of 2013(O&M)

Reserved on:05.01.2015

Date of decision:14.01.2015

M/s National Rice & Dal Mills & others

.....Petitioners

Versus

Alok Kumar Garg & others

.....Respondents

CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.G.C.Dhuriwala, Advocate, for the petitioners.

Mr.Sanjiv Pabbi, Advocate, for respondents No.1 & 2.

Mr.Ashok Khunger, Advocate, for respondents No.3 to 12.

G.S.Sandhawal J.

Challenge in the present revision petition, filed under Article 227 of the Constitution of India, by the petitioner-plaintiff, is to the order dated 27.01.2012 (Annexure P9), passed by the Civil Judge (Jr.Divn.), Rajpura, whereby the application under Order 39 Rules 1 & 2 CPC was dismissed. Challenge has also been raised to the order passed by the Addl. District Judge, Patiala dated 17.08.2012 (Annexure P10), whereby the appeal filed against the said order has also been dismissed.

The reasoning given by the Courts below is that defendant No.1, who had executed the sale deeds of the property in dispute is the husband of plaintiff No.5 and similarly, defendant No.2 was their son. The plaintiffs belong to the same family and in the written statement, it was admitted that the property was of the partnership firm and there was an element of collusion which was apparently visible. It was noticed that the possession

had already been delivered to the purchasers as per the sale deeds and therefore, the balance of convenience was not in favour of the plaintiffs. The alleged unregistered partnership firm did not state the suit property to be the ownership of the firm and the sale deeds had been executed by a family member who was competent to execute the sale deeds. Nothing had been brought on record to show that the partnership firm was the owner of the land and that it was still carrying on business. Rather there was material to show that the firm had closed down, as per the letter of the Punjab & Sind Bank and therefore, the defendants No.3 to 12, being *bona fide* purchasers no injunction could be granted against them as they would suffer more hardships vis-a-vis the applicants. The said order has been approved by the Appellate Authority on the ground that the discretion has been properly exercised by the Trial Court and should not be interfered with by Lower Appellate Court.

A perusal of the paperbook would go on to show that a suit for declaration was filed on 14.10.2011 regarding the land measuring 8 kanals 3 marlas and the various sale deeds executed by defendants No.1 & 2 in favour of the other defendants were challenged. The sale deeds pertained to the period from 27.01.2010 to 04.08.2011. The ground was that the petitioner-firm was the owner in possession and defendant No.1 had wrongly executed the sale deed dated 27.01.2010 in favour of defendants No.2 to 6 on the ground that it was a proprietorship concern. Defendant No.2, in turn, had executed a sale deed dated 27.12.2010 in favour of defendant No.6, Joginder Kaur, who had further executed 3 sale deeds dated 04.08.2011, in favour of defendants No.8 to 10. An application under Order 39 Rules 1 & 2 CPC was also filed, restraining the defendants from the

peaceful possession of the plaintiff and from forcibly dispossessing them from the land measuring 8 kanals 3 marlas and from further alienating, transferring or otherwise encumbering the suit property.

In the written statement filed, the plea taken was that the plaintiffs were living in a joint house and a meeting was held in the house of defendant No.1, in which, plaintiffs No.2 to 5 were present along with defendants No.1 & 2. The entire sale consideration had been made to defendant No.1 in the presence of plaintiffs No.2 to 5 and a sum of ₹28 lacs had been paid on 23.12.2010. After purchasing the land, the same was converted into commercial and residential plots and the foundations were also filled in. The plaintiff-petitioners and defendants No.1 & 2 had created a criminal conspiracy and were harassing the defendants.

In the reply filed to the application for injunction, the same plea was taken and it was alleged that the suit was filed with a view to cause loss and harassment to defendants No.3 to 12. The sale deeds were liable to be upheld being a legal and valid sale consideration.

As noticed, the Trial Court has dismissed the application for the reasons noticed above.

Counsel for the petitioner has vehemently submitted that during the pendency of the suit, the injunction should have been granted and the plaintiff-petitioners would be gravely prejudiced if the property is sold or that nature of the property is changed. Reliance has been placed upon the judgment of the Apex Court in **Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass 2004 (8) SCC 488** to submit that irreparable loss and damage would be caused to the plaintiff-petitioners.

Counsel for the respondents, on the other hand, has submitted that

the orders passed by the Courts below were well justified and this Court should not interfere in the concurrent findings whereby the injunction has been declined, especially since there is no balance of convenience in favour of the petitioners, as admittedly, they are not in possession. The suit was apparently collusive and between the family members, who wanted to blackmail the purchasers and in such circumstances, it is submitted that the injunction would seriously affect the rights of the respondents who had already raised construction and made showrooms etc. on the land in dispute.

After hearing counsel for the parties, this Court is of the opinion that the orders passed by the Courts below are well justified and there is no occasion to grant any interim injunction to the plaintiff-petitioners. Admittedly, as has been noticed, the sale deeds are subject matter of dispute which have been executed by defendants No.1 & 2 who are closely related to the plaintiffs. The relationship has already been noticed, that plaintiff No.5 is the wife and mother of defendants No.1 & 2, respectively. The suit is based on the ground that the property was owned by plaintiff No.1-firm and defendants No.2 to 4 were unaware of the sale which had been done by defendants No.1 & 2, as they were residing at Delhi. The collusiveness is, thus, apparent on the face of it, which was noticed by the Courts below and the benefit of interim injunction has rightly been declined. The relief of injunction is based on equity and is not to be granted at the cost of the persons who had purchased the property after paying heavy sale consideration.

As noticed, the Courts below noticed that the possession has already been handed over, as per the sale deeds. In such circumstances, the golden principles of balance of convenience and the *prima facie* case in

favour of the petitioners, are not present, as admittedly, the possession has been handed over to the purchasers which would rather be adverse to their interests if they are restrained from utilizing the land which they had purchased on the basis of the registered sale deeds, after paying handsome sale consideration. Nothing could be demonstrated before this Court that the plaintiff-firm was the owner, as alleged, on the basis of which, the suit has been filed. The *prima facie* case, thus, which is the sole consideration for protecting the interests of the petitioners during the pendency of the litigation, is missing on the face of the record, which would be a valid ground for this Court to refrain from exercising the supervisory powers under Article 227 of the Constitution of India, in the concurrent findings recorded by the Courts.

This Court in *Guru Nanak Educational Trust Vs. Balbir Singh 1995 (2) PLR 625* laid down the principles and set aside the order of the Lower Appellate Court which had interfered in the injunction granted. The Apex Court in *Kishorsinh Ratansinh Jadeja Vs. Maruti Corporation & others 2009 (2) CCC 808* held that the three basic principles of *prima facie* case, i.e., balance of convenience and inconvenience; irreparable loss; and injury has to be kept in kind and the conduct of the parties. As noticed, it would be more prejudicial to the defendants if any restraint order is passed. Nothing as such could be demonstrated that the plaintiff-firm is the real owner of the suit property, which is the base of the suit.

The judgment in *Mahrawal Khewaji* (supra) would not be applicable in the present case since in the said case, the Trial Court had granted interim injunction which had been vacated by the District Judge that any alienation would be subject to law of *lis pendence*. This Court had also

dismissed the revision petition by recording the undertaking that any person inducted would be made aware of the pendency of the litigation. In such circumstances, in view of the *prima facie* case established earlier, the injunction was maintained. Thus, the said judgment would not be applicable in view of the facts and circumstances of the present case and in view of the conduct of the petitioners.

Accordingly, in view of the above said discussions, the present revision revision petition is dismissed. However, nothing said herein shall affect the merits of the case, which is to be decided on the basis of the evidence led by the parties.

14.01.2015
sailesh

(G.S.Sandhawalia)
JUDGE