
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No. 1184 of 2007

Date of decision: 28. 9. 2007

Bansi Lal and another

...Petitioners

Versus

M/s Saini Rice and General Mills and others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Munish Jolly, Advocate for the petitioners.

None for respondent No. 1.

RAJESH BINDAL, J.

The challenge in the present petition is to the order dated September 16, 2006 passed by the District Judge, Patiala whereby petitioners were restrained from interfering in the peaceful possession of the respondents over the suit land.

Inspite of the service, no one has appeared for respondent no.1, who is the contesting respondent.

Learned counsel for the petitioners/defendants submitted that the revision arise out of suit filed by respondent no.1/plaintiff challenging the sale deed dated September 10, 1993 executed by Smt. Darshna Devi wife of Shiv Sharan Dass (partner of the plaintiff firm) in favour of defendants No.1 to 4 in the suit (petitioners No.1 and 2 and proforma respondents No. 2 and 3 in the present petition). Present suit was filed in October, 2004 i.e. more than 10 years after the sale deed was executed. It was stated in para 10 of the suit that no earlier suit for claiming the relief prayed for was either pending or filed. Learned trial Court while considering the prayer for interim relief under Order 39 Rule 1 and 2 of the Code of Civil Procedure (for short “the Code”) rejected the same finding that no prima face case is made out by respondent no.1/plaintiff, however, in appeal before learned District Judge, the order passed by the trial Court was reversed and it was directed that possession of respondent no.1/plaintiff shall not be interfered with on the suit land and

further defendants no.1 and 4-vendees were restrained from alienating the suit land.

At the very outset learned counsel for the petitioners submitted that present suit filed by respondent no.1/plaintiff is nothing else but a misuse of process of Court as the sale deed dated September 10, 1993 regarding the suit land was earlier challenged by him by filing a suit in March, 1995 in which both the Courts below did not find favour with the contention raised by respondent no.1/plaintiff for grant of interim relief. Application filed by respondent no.1/plaintiff under Order 39 Rule 1 and 2 of the Code for interim relief in the earlier suit was dismissed by the trial Court and the Lower Appellate Court vide order dated June 14, 1995 (Annexure P-10) and February 7, 1996 (Annexure P-11), respectively. Thereafter the respondent no.1/plaintiff did not put in appearance in the suit and ultimately the same was dismissed in default on October 28, 1996 (Annexure P-12). Having failed in the earlier litigation claiming the same relief, still respondent no.1/plaintiff filed the present suit concealing the factum of earlier suit, which infact is not maintainable as the present suit is not only barred by principle of res-judicata but also barred by limitation.

After hearing learned counsel for the petitioner, without opining anything on merits of the controversy between the parties, I find that from the perusal of plaint in both the suits, which have been placed on record as Annexure P-3 (plaint in the present proceedings) and Annexure P-9 (plaint in the earlier suit filed by respondent no.1/plaintiff), it reveals that pleadings are identical and even suit property is also the same. Once respondent no.1/plaintiff had already availed of legal remedies to challenge the same sale deed in the earlier litigation and his prayer for interim relief did not find favour with the Courts below, there is no occasion for grant of interim relief in favour of respondent no.1/plaintiff as even prima facie the suit would be barred by limitation as filing of earlier suit would clearly show the knowledge of the sale deed to respondent no.1/plaintiff way back in 1995 only, whereas present suit was filed in the year 2004.

Accordingly, I find merit in the contention raised by learned counsel for the petitioners. The order dated September 16, 2006 passed by the

learned Lower Appellate Court is set aside and that of the trial Court dated April 7, 2006 is restored and application filed by respondent no.1/plaintiff under Order 39 Rule 1 and 2 of the Code is dismissed.

The revision petition is disposed of in the manner indicated above.

September 28, 2007
Pka

(Rajesh Bindal)
Judge