

**IN THE COURT OF KARANDEEP KAUR, PCS,
CIVIL JUDGE (JR.DIVN.), MALERKOTLA.
UID-PB0393**

Suit No.....91 dated 08.04.2016
Regd. No.....CS/209/2016
CNR No....PBSGC0-000209-2016
Date of order.....06.07.2016

Shehzad Ali Khan, son of Faiz Mohd. Khan

.....applicant/plaintiff.

Versus

Sakib Ali Khan, son of Wahid Ali Khan and another

.....respondents/defendants.

Application under Order 39 Rules 1 and 2 CPC.

Present: Sh. Ajay Sharma Adv. for applicant/plaintiff.
Sh. Ravinder Sood Adv. alongwith Sh. Liaqat Ali Adv.
counsels for respondent/defendant no.2.
Sh. Sushil Kumar Adv. counsel for performa
respondent/defendant no.2.

ORDER:

This order of mine shall dispose of the application under Order 39 Rules 1 & 2 C.P.C., filed by the applicant/plaintiff.

2. It is contended in the application that the plaintiff is exclusive owner in symbolic possession of suit property which is situated within Lal Lakir of City Malerkotla. The plaintiff is regularly leasing out the suit property on yearly basis to different persons since last many years. The performa defendant is in possession of the suit property as tenant on yearly lease since 2008. Some other properties are joint between the plaintiff, defendant no.1 and other co-sharers but the defendant no.1 has no right, title or concern either with the ownership or possession of the suit property and plaintiff is exclusive owner of the suit property. An

electric connection also got installed in the name of plaintiff in the suit property. Defendant no.1 is trying to dispossess the plaintiff and perform defendant from the suit property illegally, forcibly and without due course of law and is also trying to interfere in the peaceful possession of the plaintiff over the suit property illegally, forcibly and without due course of law for which the defendant no.1 has got no legal right. So, prayed to allow the application.

3. In reply to the application, it is contended by the respondent/defendant no.1 that suit property is joint property of plaintiff, defendant no.1 and certain other persons and defendant no.1 is owner in possession of suit property. No injunction suit lies against co-sharers. Plaintiff himself has pleaded that he is not in actual and physical possession of the suit property. So, he is not entitled to injunction. The alleged lease deeds are forged and fictitious documents and are inadmissible in evidence for want of stamp and registration and confers the right or interest in the suit property. Lastly, prayed for dismissal of the application.

4. After hearing the contentions of the learned counsels for the parties and perusing the case file carefully, this court is of the considered view that while determining the question of granting interim injunction, the court is primarily guided by three principles which are Prima facie case, Balance of Convenience and Irreparable loss and injury. All these ingredients must co-exist in the case of the applicant/plaintiff to succeed for obtaining interim injunction from the court. This court is of the further view that court is not only guided by the aforesaid three ingredients but

Court has also to see that applicant is not to make out full proof case. The prima facie case means that applicant has got fair question of raising an issue which requires fair trial. At the time of deciding interim injunction, court is not to hold mini trial. The court cannot see the documents and evidence available on the file in such a manner as the same is scrutinized after the conclusion of trial.

5. The stand of the plaintiff is that he is exclusive owner in symbolic possession of suit property which is situated within Lal Lakir of City Malerkotla and the performa defendant is in possession of the suit property as tenant on yearly lease since 2008 but defendant no.1 is trying to dispossess the plaintiff and performa defendant from the suit property illegally, forcibly and without due course of law and is also trying to interfere in the peaceful possession of the plaintiff over the suit property illegally, forcibly and without due course of law for which the defendant no.1 has got no legal right. On the other side, defendant no.1 alleged that suit property is joint property of plaintiff, defendant no.1 and certain other persons and defendant no.1 is owner in possession of suit property. To prove his contentions, plaintiff has placed on record bill of electric connection which is installed in the suit property which is in the name of plaintiff. Plaintiff has also produced on record lease deeds which shows that the plaintiff has lease out the suit property to performa defendant and he is in possession of the suit property as tenant. The plaintiff has in symbolic possession of the suit land and he has filed the present application to protect the possession of his tenant. It is a settled law that the legal possession is to be always with the landlord, the landlord has

locus standi to protect the possession of his tenant by way of independently filing suit of permanent injunction. At this stage, there exist prima facie case in favour of the plaintiff and if the defendant no.1 not restrained then an irreparable loss is going to be caused to plaintiff. Balance of convenience also lies in favour of the plaintiff. Consequently, the application in hand is allowed and the defendant no.1 is restrained from dispossessing the plaintiff and perform defendant from the suit property and further defendant no.1 is restrained from interfering in the peaceful possession of the plaintiff and perform defendant in the suit property, till the decision of the main case on merits.

6. However, any observation made by this Court in this order shall have no effect on the merits of the case.

Pronounced in Open Court
Dated: 06.07.2019

(Karandeep Kaur)
Civil Judge (Jr.Divn.)
Malerkotla. UID-PB0393

Kuldeep Kaur
JW-II

Shehzad Ali Vs. Sakib Ali Khan

Present: Sh. Ajay Sharma Adv. for applicant/plaintiff.
Sh. Ravinder Sood Adv. alongwith Sh. Liaqat Ali Adv.
counsels for respondent/defendant no.2.
Sh. Sushil Kumar Adv. counsel for performa
respondent/defendant no.2.

Arguments on application U/o. 39 Rules 1 & 2 CPC heard.

Vide my separate order of even date, the application has been allowed, as
stated therein. Issues were already framed in this case on 02.11.2018.

Now, case is adjourned to 16.08.2019 for evidence of plaintiff.

Pronounced in Open Court

Dated: 06.07.2019

(Karandeep Kaur)
Civil Judge (Jr.Divn.)
Malerkotla. UID-PB0393

Kuldeep Kaur
JW-II