

**IN THE COURT OF JAGMOHAN SINGH SANGHE
ADDITIONAL DISTRICT JUDGE, AMRITSAR
(UID No.PB0447).**

Case Details	
Case Type	CA
Filing No.	4776/2018 Dated 05.11.2018
Regn. No.	772/2018 Dated 06.11.2018.
CNR No.	PBAS01-015908-2018
Date of order	29.04.2019.

Jaswinder Singh

Versus

Karnail Singh

**Appeal against judgment and decree dated
18.09.2018 passed by the court of Ms.
Jagminder Kaur, Civil Judge (Junior
Division), Amritsar.**

**Application under Order 41 rule 5 read
with section 151 CPC.**

Present Shri Ranbir Kaushal, Advocate
 counsel for the appellant.
 Shri Vishal Bhardwaj, Advocate
 counsel for the respondent.

ORDER

1. Through this order the application under Order 41 rule 5

read with section 151 CPC having been filed by applicant/appellant Jaswinder Singh has been disposed off.

2. It is averred in the application that the trial court has decreed the counter claim having been filed by the respondent thereby directing the applicant/appellant to hand over the vacant possession of the disputed property to the respondent within a period of two months from the date of passing of the decree. It is averred in the application that there is prima-facie case and balance of convenience in favour of the applicant/appellant and in case during pendency of this appeal, the applicant/appellant is dispossessed from the property in question, the very purpose of filing this appeal would frustrate. A prayer for staying the operation of the said decree during pendency of the appeal has been made.

3. In reply to the said application, same has been questioned on the ground of it being an abuse of the process of law and maintainability. A prayer for dismissal of this application has been made.

4. I have heard the respective submissions of the counsel

for both the sides and have carefully gone through the file.

5. Perusal of the appeal file reveals that through this appeal the judgment and decree dated 18.09.2018 passed by the court of Ms. Jagminder Kaur, Civil Judge (Junior Division), Amritsar, vide which the counter claim filed by the respondent was decreed, has been put to challenge. The appeal already stands admitted for hearing on merits considering the grounds of appeal involved therein subject to all just exceptions. The appeal is in fact a continuation of the original suit and in these circumstances if the decree passed by the trial court is executed by dispossessing the the applicant/appellant from the suit property during pendency of this appeal, it will certainly frustrate the very purpose of filing of this appeal hence, a *prima facie* case and balance of convenience certainly lies in favour of the applicant for grant of relief prayed for in this application.

6. Resultantly, this application under Order 41 rule 5 read with section 151 CPC stands allowed and operation of the impugned

decree under appeal is ordered to be stayed during pendency of this appeal.

**Pronounced in Open Court
Dated: 29.04.2019**

**(Jagmohan Singh Sanghe)
Additional District Judge,
Amritsar: UID No.PB0447**

***dalipkumar
Stenographer Grade-I**

CNR No. PBAS01-015908-2018

CA Regn. No. 772 of 2018.

Jaswinder Singh Vs. Karnail Singh.

Present Shri Ranbir Kaushal, Advocate
 counsel for the appellant.
 Shri Vishal Bhardwaj, Advocate
 counsel for the respondent.

ORDER

Heard. Vide separate detailed order of the even date, the application filed by the appellant under Order 41 rule 5 read with section 151 CPC has been allowed and operation of the impugned decree under appeal is ordered to be stayed during pendency of this appeal.

Trial court record has already been received. Now, for arguments to come up on 29.05.2019.

(Jagmohan Singh Sanghe)
Additional District Judge,
Amritsar. 13.04.2018.
(UID No.PB0447).

Date of order : 29.04.2019.

*dalipkumar

Stenographer Grade-I.