

Civil Suit No.494 of 31.05.2016

Date of Institution: 31.05.2016

CIS No. CS-565-2016

Date of Order: 10.07.2017

Next Date of hearing: 11.09.2017

Application under section 39 Rules 1 & 2 CPC.

Present: Sh. Mandeep Maudgil, Adv. for the plaintiff/applicant.
Sh. Gurpreet Singh, Adv. Counsel for the defendant/respondents
No.1, 2 and 3
Sh. Surinder Singh Adv counsel for defendant-respondent No.4.
Defendant No.5 exparte.

ORDER:-

Present order of mine shall dispose of application under order 39 Rule 1 and 2 read with section 151 of CPC, filed by plaintiff/applicant for issuance of interim injunction restraining defendants from raising further construction over the suit land illegally and forcibly, till disposal of the suit.

2. Brief facts of the case, as per application, necessary for decision of present application are that the plaintiff is owner of the suit property and she has every right to claim possession of the suit property on the basis of title. The applicant-plaintiff has purchased the suit land vide registered sale deed dated 08.02.2006 and since then the plaintiff is owner of the suit property. The defendants have encroached upon the suit property in the year 2006 illegally and forcibly and have raised construction thereupon the suit property illegally and forcibly, to which they have no legal right to do so. The respondents-defendants are taking hasty steps to raise the further construction over the suit property illegally and forcibly to which they have no right to do so. At end, plea of balance of convenience, prima facie case and irreparable loss is raised and prayer for interim injunction is made.

3. Upon notice, defendants No.1, 2 and 3 appeared and filed reply to

the application, wherein it has been averred that the plaintiff has filed a similar suit which has been dismissed vide judgment and decree dated 20.01.2012 by the court of Civil Judge (Jr. Divn) Kharar. The plaintiff has also filed an appeal against this judgment which has been also dismissed on 11.09.2014 by the Hon'ble Court of Addl. District Judge, SAS Nagar. It has been further averred that the plaintiff is neither owner nor in possession of the property in suit as such the suit is not maintainable and liable to be dismissed. The answering defendants are owners of the suit property and are in possession of the same. The answering defendants have purchased the suit property through registered sale deeds. The house was constructed prior to the year 1989 as the same was purchased by the defendants. Denying other averments, prayer for dismissal of application is made.

4. Upon notice, defendant No.4 appeared and filed reply to the application wherein it has been averred that the replying defendant has duly purchased the plot vide sale deed dated 16.12.1994 for construction and the vendee has delivered the exclusive possession of the plot to the replying defendant and thereafter defendant got sanctioned the site plan from the Municipal Council Kurali and constructed her house over the said plot and since then, he is residing in the suit property with her family and the plaintiff has no right, title or interest in the property of the replying defendant. The plaintiff or any other person have waived their rights, title or interest in the suit property by allowing the defendant to construct a house, remain in exclusive possession and to enjoy the property since the year 1994. Denying other averments, prayer for dismissal of application is made.

5. I have heard Sh. Mandeep Maudgil, Adv. counsel for the plaintiff/applicant, Sh. Gurpreet Singh Adv. Counsel for defendants No.1, 2 and 3 and Sh. Surinder Singh, Adv. Counsel for the defendant/respondent No.4

and gone through the case file and documents on record.

6. Sh. Mandeep Maudgil, Adv Ld counsel for the plaintiff has argued that the suit property is ownership of the plaintiff but in possession of the defendants and defendants be restrained from raising construction over the suit property illegally and forcibly. Therefore, application be allowed.

7. On the other hand Sh. Gurpreet Singh Adv Ld counsel for the defendants No.1 to 3 and Sh. Surinder Singh Adv Ld counsel for defendant No.4 have argued that in the present case earlier similar case was filed by the plaintiff in the court of Civil Judge Junior Division Kharar and the same was dismissed vide judgment and decree dated 20.01.2012 and appeal against said judgment has also been dismissed on 11.09.2014 and above judgments have been concealed by the plaintiff in the present case. Therefore, application be dismissed.

8. With the present application, plaintiff want injunction order against the defendants for restraining them from raising construction over the suit property. On the other hand defendants have produced copy of judgment dated 20.01.2012 and copy of judgment dated 11.09.2014 and perusal of the same, reveals that plaintiff has filed suit regarding the suit property earlier and the same has been dismissed. From perusal of plaint, it reveals that above judgment has been concealed by the plaintiff and injunction, being discretionary relief cannot be granted to the plaintiff in view of concealment of material facts. Even otherwise, if defendants are presumed to be in illegal possession over the suit property and if they raise construction over the suit property illegally, no irreparable loss can be said to be caused to the plaintiff, since they are raising construction at their own costs.

9. Therefore, no prima-facie case is made out in favour of the plaintiff with regard to the present application, which is sine-qua-non for

granting temporary injunction. As such, present injunction application is hereby dismissed.

10. However, my above discussion shall not bear any effect on merit of the case and is for the purpose of this application only.

Pronounced in open court:
Date: 10.07.2017

Anish Goyal
Addl. Civil Judge (Sr.Div)/ Rupnagar.
(UID No.0320)

Vinod Kumar-Stenographer

Kamal Kumari vs Dilbag Rai and others

Present: Sh. Mandeep Maudgil, Adv. for the plaintiff.
Sh. Gurpreet Singh, Adv. Counsel for the defendant No.1, 2 and 3
Sh. Surinder Singh Adv counsel for defendant No.4.
Defendant No.5 exparte.

Heard. Vide my separate detailed order of even date, stay application has been disposed of. Parties are asked about chances of compromise, but they did not agree. So there is no need to send this case to Alternative Dispute Redressal Forum. From the pleadings of the parties, the following issues are framed:-

1. Whether the plaintiff is entitled for the relief of possession, as prayed for? OPP
2. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for? OPP
3. Whether the suit is not maintainable? OPD
4. Whether plaintiff has concealed material facts from the court? OPD
5. Whether the plaintiff has no locus-standi and cause of action to file the present suit? OPD
6. Whether the suit is bad for non-joinder of necessary parties? OPD
7. Whether the suit is barred under Order 2 Rule 2 and Order 23 of CPC? OPD
8. Whether the suit is barred under the principle of res-judicata? OPD
9. Whether the suit is within limitation? OPP
10. Relief.

No other issue arises or pressed for. Onus not disputed. Now to come upon 11.09.2017, for evidence of the plaintiff. PF/DM and list of witnesses be furnished within 15 days failing which no assistance of the Court to summon the witnesses shall be granted.

Pronounced in open court:

Date: 10.07.2017

Anish Goyal

Addl. Civil Judge (Sr. Division):

Rupnagar.

Vinod Kumar-Stenographer

Next Date:_____

Purpose:_____