
(2023) 12 SHI CK 0060
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 371 Of 2020

Narender Pal

APPELLANT

Vs

Sohan Lal

RESPONDENT

Date of Decision : 19-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2023) 12 SHI CK 0060

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Sudhir Thakur, Karun Negi, Somesh Sharma, P.S. Goverdhan, Rahul

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. Invoking provisions of Article 227 of the Constitution of India, defendant-petitioner (hereinafter 'defendant') has approached this Court against impugned judgment dated 31.8.2020, passed by District Judge, Solan, District Solan, Himachal Pradesh, in Civil Misc. Appeal No.11-S/14 of 2020, titled as Narender Pal v. Sohan Lal, whereby the Appellate Court has affirmed the order dated 29.6.2020, passed by Civil Judge, Court No.2, Solan, Himachal Pradesh, in CMA no.117-6 of 2020, titled as Sohan Lal v. Narender Pal, directing the parties to maintain status quo qua nature possession and character of the suit land, comprised in Khata/Khatauni No.132min/189min Khasra No.243, measuring 4 biswas, situate in Mauza Anech Hadbast No.69/819, Tehsil and District Solan, Himachal Pradesh.

2. I have heard learned counsel for the parties and have also gone through the material placed before me.

3. Admitted facts in present case are that nature of the suit land, described above, is Abadi Deh, which is owned and possessed by the plaintiff-respondent (hereinafter 'plaintiff'), defendant, their two other brothers and a sister. Families

of plaintiff, defendant and two other brothers are residing in a building constructed on the suit land. All four brothers are occupying separate portions of the building. Defendant is in occupation of constructed portion in the ground floor, lintel whereof is vacant. Portion occupied by the plaintiff is on the first and second floor and lintel of the portion occupied by the defendant is in front of the constructed area of first floor in occupation of plaintiff.

4. According to the plaintiff, the other brothers, including defendant, are having sufficient open portion as courtyard for their use in front of their respective portions of the building occupied by them, whereas plaintiff is having courtyard in the shape of lintel, which is of the ground floor occupied by the defendant. According to plaintiff, defendant has no right to raise construction of first floor upon the lintel, because in lieu of courtyard being used by other three brothers, plaintiff has been given lintel for using it as a courtyard, and that in case construction is permitted to be raised by defendant on the lintel, it would deprive the plaintiff not only of the courtyard but also light, air, etc. to his adjacent constructed portion in his possession.

5. For grant or refusal of injunction, the Court has to see that in whose favour prima facie case and balance of convenience are, and which party would suffer irreparable loss in case of allowing or disallowing the prayer of temporary injunction. Factum of bonafide contest of the trial, involving serious question making out a case for trial, is also a relevant consideration for allowing or denying the temporary injunction.

6. In present case, admittedly, property though possessed by brothers separately, but has been recorded in joint ownership and possession and there is no family settlement deed or any other document either with the parties or registered in the revenue record, indicating the specific right of the parties on the specific portion of the suit land and building in reference.

7. The defendant is claiming that he, like other three brothers, is in exclusive possession of a portion in ground floor and, therefore, he has a right to raise construction on the lintel at the first floor, whereas plaintiff is claiming right to use the said lintel as a courtyard and, further, according to plaintiff he is joint owner in the entire property, however, as per domestic arrangement, he has been provided the courtyard on the first floor. Plaintiff is claiming possession over the lintel, whereas the defendant is claiming that he is entitled to raise construction thereon, with the plea that the plaintiff has already raised construction over first floor as per his requirement in the year 1995, but now he is not allowing the defendant to raise construction as per requirement of defendant. Though the defendant has placed on record Electricity Consumption Bill, Water Consumption Bill and Photographs, but the Electricity Consumption Bill and Water Consumption Bill only indicate that the meters have been installed in the name of defendant but on the basis of that, in absence of specific evidence, cannot be considered to have exclusive right over the portion of property possessed by him, muchless right to raise construction on the lintel in front of

the portion in possession of plaintiff. Both the parties have yet to establish their respective claims raised in rival contentions reflected in the pleadings.

8. It is also noticeable that there is no document with the defendant to substantiate his claim that property in reference has been formally partitioned amongst the right holders, but to the contrary there is revenue record reflecting the suit property as a joint property.

9. In aforesaid facts, in case construction is allowed to be raised on the lintel of first floor, in front of the house of the plaintiff and if later on the plaintiff is able to prove his claim to use lintel as courtyard, then keeping in view the nature of construction and location thereof, i.e. upon lintel of the ground floor, it would not be possible, without causing harm or damage to the lintel of first floor or the adjoining property, to pull down or dismantle the construction so proposed to be raised in order to deliver vacant possession to the plaintiff. In case injunction granted is not continued then construction proposed to be raised will destroy the status of lintel claimed to have been used as a courtyard by the plaintiff and the plaintiff will suffer irreparable loss and injury whereas in case of granting and continuing temporary injunction, restraining the defendant from raising any construction upon the suit premises, would not cause the defendant to suffer irreparable loss and injury.

10. I have also gone through the judgment of the Supreme Court, relied upon by the defendant, passed in ECE Industries Limited v. S.P. Real Estate Developers P. Ltd. And another, reported in 2009(3) Apex Court Judgments 250(SC) : (2009) 12 SCC 776. However, in the facts and circumstances of the present case, I am of the opinion that the said judgment is of no help to the defendants, as pulling down or dismantling construction, after allowing the same during pendency of the suit, shall be harmful and damaging not only to the plaintiff but also to the defendant who is intending to raise construction on a portion of lintel of already constructed ground floor in his possession.

11. In the aforesaid facts and circumstances, I am of the opinion that it is not a case where ex facie no case is made out, rather a prima facie case is made out in favour of plaintiff alongwith balance of convenience and possibility of irreparable loss to him. Therefore, I do not find any judicial impropriety, illegality or material irregularity or perversity in the impugned judgment and order, warranting interference by this Court, exercising power under Article 227 of the Constitution of India.

12. Before parting, it is apt to record that bonafide contest, with seriousness, is also a factor relevant for granting and continuing the temporary injunction. In case, plaintiff is found to be instrumental in lingering on or delaying the Court proceedings in the main suit, for extraneous reasons with a motive and intention to prolong the litigation, then the protection granted to him, by way of temporary injunction, shall not be available to him and will be liable to be quashed and set aside. In such eventuality, the defendant shall have liberty to take appropriate

recourse, if warranted and desired so, for vacation of the temporary/interim injunction, whereby the parties have been directed to maintain status quo.

13. In view of above, petition is dismissed with liberty to the defendant to move an application for vacation of the interim order, in accordance with law, if circumstances warrant so.

Present petition stand disposed of, in aforesaid terms, so also pending application(s), if any.