

(1968) 01 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 375 of 1967

Shankar Singh

APPELLANT

Vs

Firm Sudarshan and Company and others

RESPONDENT

Date of Decision : 23-01-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1

Citation : (1968) 01 P&H CK 0016

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : H.S. Gujral, for the Appellant; H.L. Sarin and B.S. Malik, for the Respondent

Final Decision : Allowed

Judgement

P.D. Sharma, J.—The facts giving rise to this revision petition against an order passed by the learned Addl. District Judge, Amritsar, on an appeal filed before him under Order 43 rule, 1, Code of Civil Procedure, may briefly be noticed. A certain parcel of land situate in the area of village Balkalan, tehsil and district Amritsar was held by Smt. Basant Kaur and her daughter Smt. Swarn Kaur, the first of them died 41/2 years" back Her husband Bishan Singh personally and as Mukhtiar of Smt. Swarn Kaur on 8th August, 1963 executed an agreement to sell the above land along with the buildings, tube-well and other machinery situate thereon for a sum of Rs. 31,700/- in favour of Messrs Sudarshan and Company through Sudarshan Singh. Rs. 2,000/- were paid in advance. Possession of the land and the buildings was delivered to the prospective buyers on the date of the execution of the agreement This land already stood attached towards the realisation of debt executed by Bishan Singh from the State Government. The prospective buyers were required to pay this debt of the Government and to get the land released from attachment. The buyers were given to understand that near about Rs. 16,000/- only were due from Bishan Singh but in fact he had to pay Rs. 40,000/-. Therefore the sale deed could not be executed within the

stipulated period. The Collector sold the land in a public auction and was purchased by Shankar Singh son of Bishan Singh. He also obtained symbolical possession thereof. Thereupon, firm Sudarshan and Company instituted a suit in the Court of the Subordinate Judge, Amritsar, for permanent injunction restraining Bishan Singh, Smt. Swaran Kaur and Shankar Singh from interfering in their lawful possession thereof and further prayed that defendant No. 3 should also be restrained from obtaining possession of the land through the Collector who had sold the land in public auction. They alleged that the land in fact was purchased by Bishan Singh, and Shankar Singh was only a benamidar and that Bishan Singh and Shankar Singh both constituted a joint Hindu family. Bishan Singh died during the pendency of the suit. Names of his legal representatives were brought on the record. The plaintiffs in the suit had also applied under Order 39 rules 1 and 2 read with section 151, Civil Procedure Code, for a temporary injunction in the terms of the permanent injunction prayed for by them. The learned Subordinate Judge granted their prayer *ex parte* but on being moved by defendant No. 3 set aside the above order and declined to grant the temporary injunction by his order dated the 1st July, 1966. The plaintiffs preferred an appeal against this order which came up for hearing before the learned Additional District Judge who allowed it and granted them a temporary injunction restraining the defendants from taking possession of the property in dispute either forcibly or on the basis of a warrant of possession to be obtained by defendant No. 3 from the Collector. Shankar Singh defendant No. 3 has come up in revision to this Court.

2. The Learned Counsel for the petitioner maintained that no appeal lay to the District Judge against the order of the trial Judge by which he had refused to grant the temporary injunction to the plaintiffs as the order was passed by him u/s 151 of the CPC and not under Order 39 rules 1 or 2, Civil Procedure Code, and that being so the order under revision was without jurisdiction and was liable to be set aside. He relied on the provisions made in order 39 rules 1 and 2 of the CPC which provide the conditions under which temporary injunctions could be granted by the civil Court. The present case did not fall in any one of the contingencies enumerated therein. The Learned Counsel for the respondents, however, maintained that the temporary injunction could be granted by the Court below under Order 39 rule 2(1) of the CPC as the suit was for restraining defendant No. 3 from committing "other injury of any kind" as mentioned therein. The word "injury" as used in this provision of law has been interpreted in *Manohar Lal Mahabir Pershad v. Jai Narain Babu Lal* AIR 1920 Lah. 436, as an act which is contrary to law. Defendant No. 3 indeed was trying to obtain possession of the land in pursuance of an order of a Court and while doing so cannot be said so be acting contrary to law. The injunction prayed for by no stretch of imagination is covered by Order 39, rules 1 and 2 of the Code of Civil Procedure. My view finds support from *Kanshi Ram and another v. Sharaf Din* AIR 1923 Lah. 144(2) and *Hari Chand and others v. Mst Durga Devi* AIR 1934 Lah. 79(2). In the latter case Bhide J observed.

An order refusing to grant temporary injunction restraining the decree-holder purchaser from obtaining possession of property purchased is one passed u/s 151 and not under Order 39, rule 1, and as such no appeal lies from such order.

There is no doubt left in my mind that no appeal lay against the order of the trial Judge to the District Court and as such the order under revision was passed by the learned Additional District Judge without jurisdiction. Further, the plaintiffs had not made out that there was no other remedy open to them by which they could protect themselves from the consequences of the injury complained of. They have also not shown that unless defendant No. 3 is restrained forthwith by a temporary injunction, irreparable injury or inconvenience may result to them before the suit is decided on merits. These are the conditions on which a temporary injunction of the kind prayed for in the present proceedings could have been granted as laid down in Manohar Lal's case. The plaintiffs have been in possession thereof for almost four years without payment of rent to anybody. In case of success they can claim damages from defendant No. 3 for wrongful possession of the land belonging to them. The order passed on appeal is bad in law and is liable to be set aside in revision.

3. The revision, therefore, is allowed with costs and the order under appeal is set aside. Counsel fee Rs. 50/.