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**(1977) 07 P&H CK 0002**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revision No. 1701 of 1976**

Smt. Giano

APPELLANT

Vs

Bhim Singh and another

RESPONDENT

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**Date of Decision :** 29-07-1977

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

**Citation :** (1977) 2 ILR (P&H) 768

**Hon'ble Judges :** R.S. Narula, J

**Bench :** Single Bench

**Advocate :** I.C. Jain, for the Appellant; R.D. Dhaiya, for the Respondent

**Final Decision :** Allowed

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## Judgement

R.S. Narula, C.J.—A money decree was passed in favour of Bhim Singh respondent against Giani respondent in a suit filed by Brim Singh respondent against Giani for specific performance of the agreement to sell certain property and in the alternative for the refund of the earnest money, etc. In execution of that decree the land now in dispute was sought to be attached and sold. Smt. Giano plaintiff-petitioner objected to the attachment of the agricultural land. Her objections were upheld. Bhim Singh respondent then filed a suit for declaration to the effect that the land in dispute belonged to the judgment-debtor Giani (who is the husband of the plaintiff-petitioner) and was liable to attachment and sale in execution of his decree. That suit was decreed ex-parte on August 29, 1974. There upon the present plaintiff-petitioner filed the suit form which the present proceedings have arisen in August, 1976. In this suit she has prayed for a declaration to the effect that the judgment and decree, dated August 29, 1974 in suit No, 698, dated August 28, 1974, and the mutation mentioned in the plaint are null and void and are not binding on the plaintiff, and the plaintiff is still the owner in possession of the suit land mentioned in the plaint. Along with the suit the plaintiff filed an application for a temporary injunction to restrain defendant No. 1 from getting the land auctioned till the final disposal of the suit. By his

order, dated September 9, 1976, the Subordinate Judge First Class, Sonapat, dismissed the plaintiff's application on at least three different grounds. The plaintiff's appeal against the order of the trial Court has been dismissed in limine by the Court of Shri Raj Kumar Gupta, Senior Subordinate to Judge, Sonapat (with enhanced appellate powers) on October 30, 1976. The only ground on which the appeal has been dismissed is that no temporary injunction can be granted in a suit for a declaration *Simpliciter*. Reliance has been placed for that proposition on certain observations in the judgment of Gurdev Singh, J. in *Surja and others v. Gopi* 1970 Cri. L.J. 188. The learned Senior Subordinate Judge has not gone into the correctness on validity of all other grounds urged by the plaintiff before the trial Court. Nor has he dealt with the application for temporary injunction on merits.

2. The only question that, therefore, calls for decision in the present case is whether the learned Senior Subordinate Judge has or has not refused to exercise jurisdiction vested in him by law to grant a temporary injunction pending a declaratory suit. In other words the question is whether temporary injunction can or cannot be granted in a suit for declaration *simpliciter*. Section 37 (1) of the Specific Relief Act states that temporary injunctions are such as are to continue until a specified time, or until the further order of the Court, and they may be granted at any stage of a suit. The section further provides that the grant of temporary injunction is regulated by the Code of Civil Procedure. Rules 1 and 2 of Order 39 of the CPC enumerate the circumstances in which a temporary injunction may be granted. If the relevant part of the provision is extracted from clause (a) of rule 1 of Order 39 of the Code it would read as below:?

Where in any suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being.....sold in execution of a decree.....the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing.....alienation, sale or disposition of the property.....or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

Though the property to which the agreement for sale related was indeed a different property and is no more the property in dispute, the property which is the subject-matter of the present suit in the land which is sought to be attached and sold by Bhim Singh respondent. Nobody can deny that that is the property in dispute in the present suit. The sole case of the plaintiff is that the said property is in danger of being sold in execution of Bhim Singh's decree against the plaintiff-petitioner's husband who is respondent No. 2 before me. So far as the question of jurisdiction of the Court to grant a temporary injunction under Order 39 Rule 1 of the Code is concerned, the plaintiff's case appears to me to fall squarely within the above-quoted extracted portion of Order 39 Rule 1 of the Code. It is an entirely different matter whether the plaintiff has or has not a *prima facie* case or whether it is otherwise on merits a fit case for the grant of

injunction or not. Those are matters with which I am not concerned as the lower appellate Court has not at all dwelt upon them. Mr. R.P. Dahiya, Learned Counsel for the first respondent, has again referred me to the Single Bench Judgment of this Court in the case of Surja and others (supra). The learned Judge has not in fact held in so many words that no temporary injunction can in any circumstances be issued in a declaratory suit. After taking notice of the fact that the suit out of which the matter had arisen before the learned Judge was for a declaration simpliciter reference was made to the Division Bench judgment of the Andhra Pradesh High Court in Peddinti Gopalacharyulu Vs. Rudraveeranna and Others, , and it was then stated that "this authority does support" Mr. Mittal's contention that the learned Subordinate Judge had acted without jurisdiction in granting the interim injunction." This does not, in my opinion, amount to the learned judge having held that no injunction can be granted. The learned judge had already given his final decision in the end of paragraph 5 of the judgment that the plaintiff-respondent in that case was not entitled to the on-interim injunction. It was only an additional argument of the defendant based on the judgment of the Andhra Pradesh High Court which was noticed in connection with which it was observed that the said judgment did lend support to the contention of the defendant's counsel. In the above circumstances the judgment of Gurdev Singh J. neither went into the merits of the contention and came to any decision on it, nor was it necessary for the learned Judge to do so in the view he had already taken on the merits of that particular case.

3. I have seen the judgment of the Division Bench in the Andhra Pradesh case. Their Lordships held that outside the scope of Order 39 Rules 1 and 2 of the Code, the Courts have no jurisdiction to grant any injunction in exercise of the Court's inherent powers. In a suit by the archaka of a temple for a declaration that he has a right to remain in possession of the suit lands as long as he performs archakathvam service and that he cannot during that time be evicted from those lands was considered to be not a suit for restraining the defendants from committing any injury of any kind, and, therefore, it was held that no injunction would be granted to the plaintiff to restrain the defendants from taking proceedings to recover possession of the lands in dispute. The question of a suit being or not being one for restraining the defendants from committing any injury of any kind arises only in an application under rule 2 of Order 39. No such question arises in cases covered by rule 1 of Order 39. The Andhra Pradesh judgment was concerned only with Order 39 Rule 2 and is not relevant for our purposes. The party claiming the injunction had made a statement before the High Court (as noticed in the judgment) that he could not bring his case under rule 1 of Order 39, but merely argued that the case came under rule 2. The judgment, therefore, dealt with the scope of rule 2 alone. Nothing stated in the judgment of the Division Bench of the Andhra Pradesh High Court is capable of leading to the conclusion that a temporary injunction cannot be granted under rule 1 of Order 39 in any declaratory suit of any kind.

4. On the other hand the Learned Counsel for the plaintiff-petitioner has invited

my attention to the judgment of the Lahore High Court in AIR 1926 523 (Lahore) wherein it was clearly held that a temporary injunction can be granted in a suit for declaration. In my opinion it is not possible to lay down as a matter of law either that an injunction can always be granted in suit for declaration or that no injunction can ever be granted in such a suit. On the facts of each case it will have to be decided whether the application for injunction does or does not fail within the four corners of either rule 1 or rule 2 of Order 39 of the Code. The question of exercise of inherent jurisdiction of the Court is a separate matter. On the facts of this case. I hold that a temporary injunction can be issued under Order 39 Rule 1(a) of the Code if the plaintiff is able to make out a case on merits for the issue of such an injunction.

5. At the time of admitting this petition I had granted stay of the confirmation of sale of the attached property in dispute on the condition that the full decretal amount (the amount for which Bhim Singh has got a decree against the petitioner's husband) is deposited by the petitioner in the trial Court within one month from that day. It is the common case of the counsel for the parties that the requisite deposit has been made. Mr. Dahiya rightly concedes that so far as his clients interests are concerned, this revision petition has become academic so long as the full amount to which his client is entitled remains in deposit in the Court and is available to his client on the final failure of the plaintiff-petitioner in her suit.

6. In the circumstances detailed above I allow this petition, set aside the judgment and order of the Court of the Senior Subordinate Judge, Sonapat, dated October 30, 1976, and direct the said Court (or if the enhanced appellate powers are no more vested in the Senior Subordinate Judge, the Court of the Additional District Judge, Sonapat) to hear and dispose of the appeal of the plaintiff-petitioner against the judgment and order of the Court of Shri R.S. Bhatia, dated September, 30, 1976, in accordance with law in the light of what is stated above. The amount deposited by the plaintiff-petitioner shall remain in deposit in the trial Court to be paid out to the party who finally succeeds in the present suit filed by the plaintiff-petitioner. Mr. Dahiya submits that the amount should be paid out to his client. It is impossible to pass any such order in these proceedings. In the interest of both sides I direct that the amount may be put by the trial Court in fixed deposit for one year in any scheduled nationalised bank in Sonapat on the best available terms so that whoever gets the money should obtain it with interest accrued due thereon till that date. The trial Court is directed to expedite the disposal of the suit. Mr. I.C. Jain prays that a direction may be issued to the executing Court not to confirm the sale till the final disposal of the petitioner's appeal before she Senior Subordinate Judge, Sonapat. His client can make an application to the executing Court for setting aside the sale. The attachment can continue. The decree-holder can attach the amount deposited by the petitioner subject to the result of her suit, if so advised. No direction can be given by this Court on any of these matters in these proceedings.

7. The parties are left to bear their own costs.