

2025:PHHC:088542



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

115

CR-4033-2025 (O&M)

Date of decision: 09.07.2025

Rishi Raj and another

...Petitioners

Versus

Tulsi Sharma and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Parveen Chauhan, Advocate for the petitioners.

VIKAS SURI, J.

1. Prayer in this petition under Article 227 of the Constitution of India is for setting aside the impugned order dated 13.06.2025 (Annexure P-6) passed by learned Civil Judge (Junior Division), Nuh, whereby the prayer for ad interim injunction relief has been granted to the plaintiff/respondent.

2. Briefly stated, the plaintiff/respondent filed a suit for declaration that he is owner in possession of the suit property with consequential relief of permanent injunction restraining the petitioner/defendant Nos.1 and 2 from further alienating the suit property to any person and from creating any charge over the same. The trial Court by way of the impugned order dated 13.06.2025 granted the relief of interim stay.

3. Assailing the aforesaid order, the present petition has been



filed by the petitioners.

4. On a query, it is conceded by learned counsel for the petitioners that the petitioners have not assailed the impugned order before the appellate Court, which remedy is available to them under Order 43 of the Code of Civil Procedure, 1908 (for short 'CPC').

5. There is no dispute that the remedy under Article 227 of the Constitution of India is available to the petitioners only when no appeal lies against the impugned order.

6. Learned counsel for the petitioners has contended that only an ad interim order has been passed by the trial Court whereas the application under Order 39 Rules 1 and 2 CPC is still pending. Hence, the aforesaid alternative remedy of appeal would not come in the way of the petitioners in maintaining the present petition.

7. A coordinate Bench in a recent decision in ***Vijay Pal and others vs. Smt. Lali Devi and others***, 2024(2) PLR 444, held that whether an injunction order is passed *ex parte* or on an application under Order 39 Rules 1 and 2 CPC or is passed after hearing the parties, then an appeal is maintainable against such an order. In the said case, the relief of ad interim injunction was declined after hearing the parties and even in the said circumstances, an appeal was maintainable under Order 43 Rule 1(r) CPC. The relevant portion of the said judgment reads as thus:-

“In the case in hand, learned trial Court after hearing both the sides passed a detailed order dated



22.10.2018 and held that there was no ground to grant ad interim injunction and request of the plaintiff in that regard was declined. The learned trial Court passed speaking order, after hearing both the parties and after applying mind whether plaintiff is entitled for ad interim injunction or not. Whether the order is passed ex-parte on an application under Order 39 Rule 1 and 2 CPC or is passed after hearing the parties, then appeal is maintainable. The only requirement is that the order is passed under Rules 1 and 2 of Order 39 CPC. Any order granting or declining an injunction cannot be passed under Rule 3 of Order 39 independently of Rule 1 or 2 CPC. If the Court just give notice of the application under Order 39 Rule 1 and 2 CPC to the other party without expressing any opinion declining the ad interim injunction, then appeal is not maintainable. In the case in hand, order declining ad interim injunction was passed after hearing the parties, so appeal against said order is maintainable under Order 43 Rule 1 (r) CPC.”

8. In the light of the above discussion, the present petition is disposed of with liberty to the petitioners to approach the appellate Court concerned.

July 09, 2025
sumit.k

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No
Whether Reportable : Yes / No