IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR No.1356 of 2015.
Date of Decision: 15.09.2015.

Baljit Singh ....Petitioner.

VERSUS

Jagjit Singh and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. T.K. Singla, Advocate for the petitioner.

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SNEH PRASHAR, J.

By way of this revision petition, order dated 04.08.2014 passed by learned Additional District Judge, Bathinda affirming the order dated 29.05.2012 passed by Civil Judge (Junior Division), Bathinda by virtue of which application under Order 39 Rules 1 and 2 of the Code of Civil Procedure (for short, “the Code”) for ad-interim injunction of respondents No.1 and 2 was allowed and similar application of the petitioner filed with the written statement-cum-counter claim was dismissed, have been assailed.

The facts emerging from the petition are that a suit for permanent injunction seeking to restrain the defendants (petitioner Baljit Singh and another) from illegally and forcibly dispossessing the plaintiffs-respondents from a portion of plots-cum-sheds measuring 3334 square yards bearing Industrial No.C-6 and C-7, situated at Dabwali Road Focal Point, Bathinda (hereinafter referred to as the "suit property"), was filed. Alongwith the suit, an application under Order 39 Rules 1 and 2 read with Section 151 of the Code for issuance of a temporary injunctive order during pendency of the suit, restraining the petitioner-defendants from interfering in their possession or dispossessing them illegally was also filed by the plaintiffs-respondents. The petitioner appeared and filed a written statement-cum-counter claim. He also filed an application under Order 39 Rules 1 and 2 of the Code praying to restrain the plaintiffs-respondents from dispossessing him from the suit property. Considering the submissions made on behalf of the petitioner as well as respondents, learned trial Court vide order dated 29.05.2012 allowed the application for ad-interim injunction filed by the plaintiffs-respondents and dismissed the application filed by the petitioner.

Feeling aggrieved by the order dated 29.05.2012 passed by learned trial Court, the petitioner preferred an appeal which was dismissed by learned Additional District Judge, Bathinda vide order dated 04.08.2014.

Aggrieved by the aforesaid orders, the petitioner preferred this civil revision.

The submissions made by Mr. T.K. Singla, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner argued that it could not be denied by the plaintiffs-respondents that initially Plots No.C-3 and C-4 were allotted to the firm M/s Kirpal Singh & Sons by P.S.I.E.C. Limited, Chandigarh and lateron in lieu of those plots the said firm was allotted Plots No.C-6 and C-7 (the suit property). Petitioner and his father Kirpal Singh were partners in the firm in equal shares. Subsequently, a new firm M/s Punjab Industries was constituted of which Kirpal Singh, Jagjit Singh and Gursharan Singh were the partners but on the death of Kirpal Singh in the year 2003 the petitioner was inducted as partner in place of his father to the extent of 1/3rd share and this fact finds mentioned in the documents submitted with Canara Bank, Civil Lines, Branch Bathinda from whom a loan i.e. Cash Credit Limit account was got sanctioned and availed. Learned counsel contended that accordingly the petitioner has a share in the suit property and the order passed by learned trial Court as well as learned Additional District Judge dismissing his application for interim injunction filed alongwith the counter claim are wrong and liable to be set aside. Submitting that the petitioner is a co-sharer in the suit property and possession of one co-sharer in the eyes of law is possession of all, learned counsel relied upon ***Bhartu vs. Ram Sarup, 1981 P.L.J. 204.***

Considering the contentions of both the parties and the documents available on file, the findings of learned trial Court which explicitly explain the complete and correct facts are as under:-

> *"By going through the lower court file and going through the ground of appeal, that the suit property bearing two plots C6 and C7, they were allotted to Kirpal Singh and sons which was partnership firm had in equal shares in the year 1990. From the documents it shows that on 12.03.1992 a new Firm namely M/s Punjab Industries was created in which*

Kirpal Singh alongwith plaintiffs were the partners. Thereafter, Kirpal Singh submitted an affidavit with the PSIUEC Limited, Chandigarh with a request to transfer allotment of plots No.C6 and C7 in the name of M/s Punjab Industries and this was accepted and both plots were transferred to Punjab Industries. It has never been challenged by defendant No.1 prior to filing of the suit that both these plots have been wrongly transferred by PSIEC Limited Chandigarh in the name of M/s Punjab Industries on the basis of some forged documents. So, it is clear that the formation of M/s Punjab Industries Limited is with a consent of defendant No.1 and the electricity bills of the electric connection which is installed in Plots No.C6 and C7 that the electricity meter stands sin the name of plaintiff Jagjit Singh and he is paying all the bills for electricity consumption and he has placed on file photographs, which shows that he is in possession of these plots. Moreover, M/s Kirpal Singh and sons is stated to be a defunct firm which is not working at all. The plaintiff has produced on record a letter issued by AETC, Bathinda, it is disclosed that the sales licence of M/s Kirpal Singh and sons has been cancelled 10 years back. There is a family settlement on 21.07.2007 on the file which is duly signed by defendant No.1 Baljit Singh, which shows that the plots No.C6 and C7 fell to the share of Jagjit Singh and Gursharan Singh in equal shares and defendant No.1 Baljit Singh has received other properties sin this family settlement. The defendants has not challenged the said family settlement till today. The defendants has placed on file the memo of parties of OA. No.413/2010 filed by Canara Bank before the Debt Recovery Tribunal, at Chandigarh, wherein, Baljit Singh is indicated as a partner of M/s Punjab Industries. After the death of Kirpal Singh, no doubt the plaintiffs alongwith defendant No.1 reconstituted the *firm namely M/s Punjab Industries Limited, thereby all the three brothers became partner of this firm operating in the suit property w.e.f. 06.03.2003, this is a un-registered document. Since, the suit property fell to the share of plaintiffs and the plaintiffs have also prima facie proved their possession over the suit property. So, considering the documents on record, there is no prima-facie case made out in favour of the defendant No.1/appellant and balance of convenience does not lies in his favour and defendant No.1/appellant shall not suffer any irreparable loss and hence, there is no merits in this appeal and the order under appeal passed by the learned trial court does not call for any interference of this court."*

Learned counsel for the petitioner failed to demonstrate any illegality or perversity arising out of appreciation of the documents placed on record by both the parties. No doubt, the petitioner and his father Kirpal Singh were the partners of the firm M/s Kirpal Singh & Sons but the said firm is stated to be a defunct firm and is no longer operational. On 12.03.1992, a new firm namely M/s Punjab Industries was created in which Kirpal Singh and the plaintiffs were the partners. As observed by learned Additional District Judge, the firm M/s Punjab Industries was created with the consent of the petitioner. The request made by Kirpal Singh, father of the parties by submitting an affidavit with P.S.I.U.E.C. Limited, Chandigarh for transfer of the suit property in the name of M/s Punjab Industries, was accepted and accordingly the suit property was transferred in the name of M/s Punjab Industries. Subsequent to that is a family settlement dated 21.07.2007 which bears the signatures of petitioner Baljit Singh and according to the said settlement also the suit property fell to the share of respondent Jagjit Singh and Gursharan Singh in equal shares and the petitioner received other properties. Admittedly, neither the transfer of the suit property in the name of M/s Punjab Industries nor the family settlement duly signed by the petitioner vide which the suit property fell to the share of respondents No.1 and 2-plaintiffs had ever been challenged by the petitioner prior to the filing of the present suit.

As observed in the impugned orders, the electricity meter installed in the suit property is in the name of respondent Jagjit Singh and the electricity bills/receipts produced indicate that he had been paying electricity consumption bills. On the basis of the said documents and the photographs produced, learned Additional District Judge found that the plaintiffs-respondents are in possession of the suit property. The facts of the instant case are on completely different footings from the facts of *Bhartu's* case (supra) relied upon by learned counsel for the petitioner. As a consequence to the family settlement dated 21.07.2007, which bears signatures of the petitioner and had never been challenged by him earlier, the suit property had fallen in the share of respondents-plaintiffs and from other documents also placed on file, it is the respondents-defendants who are proved to be in exclusive possession of the suit property.

Accordingly, there being no illegality or perversity in the order dated 29.05.2012 and judgment dated 04.08.2014 calling for intervention, the instant petition is dismissed.

(SNEH PRASHAR)
JUDGE

15.09.2015.
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