

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

CR No. 1840 of 2015 (O&M)

Date of decision: October 30, 2015

Shri Jai Shankar

...Petitioner

Versus

Major Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. Kanwal Goyal, Advocate,
for the petitioner.

Mr. GS Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate,
for respondents No. 4 and 5.

K. KANNAN, J. (Oral)

1. The revision is brought at the instance of the plaintiff who sought for relief of injunction as an interim measure pending suit for declaration and injunction in respect of the property comprised in three khasra Nos. in an extent of 16 kanals. Admittedly, the plaintiff held a licence for running a brick kiln in relation to the said property in the year 1978. The plaintiff claimed that he purchased 11 kanals 13 marlas and had it exchanged with the 1st defendant in order that he retained the property where he was having the brick kiln. After the purchase, however, the licence had been issued with reference to 11 kanals 13 marlas but actually he was in possession of only 16 kanals described in the suit. The

respondents' contention was that the defendants No. 1 to 3 who are the original owners took advantage of the fact that there had been no registered document in favour of the plaintiff regarding the fact of exchange of the property held by the plaintiff in lieu of the property which he had purchased and handed over to defendants No. 1 to 3 and defendants No. 1 to 3 purported to create a fresh document on exchange with defendant No.4 and 5 in respect of the suit property. The cause of action for the suit was a mutation effected in favour of defendants No.4 and 5 in relation to the suit property on the basis of such exchange with defendant No. 1 to 3. The plaintiff was seeking for injunction on a plea that the property was being put to use as a brick kiln and had been entered in the khasra girdawari as in the name of defendants No. 1 to 3, but the nature of user was stated as brick kiln.

2. The principal contest was entered by defendants No. 4 and 5 who contended that the property was in their possession and that there was no brick kiln in the property. The defendants No. 1 to 3 took up a similar plea that there was no brick kiln at the property. The trial court granted the relief of status quo on the affirmation made by the plaintiff. In the appeals, one at the instance of defendants No. 1 to 3 and another at the instance of defendants No. 4 and 5, the appellate court made reference to the fact that licence issued to the plaintiff was from the year 1978 itself but only the property 11 kanals and 13 marlas had been entered as property in which the brick kiln was being run. The lower appellate court also made reference to the jamabandi that had been entered in the names of defendants No. 1 to 3

and a finding that the plaintiff's name was not entered. Therefore, held that there was no prima facie case for the plaintiff. It was further observed that the brick licence itself was not in relation to the suit property and vacated the order passed by the court as regard status quo.

3. The revision petition is by the plaintiff who relied principally on the entry in the khasra girdawari from the year 1981-1982 to 2013 to 2014, referring to the extent of 16 kanals as being put to use for the brick kiln. The particulars of ownership as entered was no doubt Inder Singh, the 1st defendant's father but the plaintiff would explain that having regard to the defence taken that there was no brick kiln at the property, the entry as regards brick kiln was really the proof that the defendants were not in possession. Learned counsel for the petitioner would also refer to a subsequent event of an order passed by the Secretary, Food and Supplies Department, setting aside granting a licence in favour of the plaintiff making particular reference to the fact that there was a brick kiln on the land comprised in 16 kanals, although the licence made reference to 11 kanals 13 marlas.

4. There are two important factors that ought to be taken as relevant for the interim orders. The reference to possession assumes significance and since the property is stated to be a brick kiln by one party and denied by the other, if the brick kiln was located therein, it would be the best evidence of showing who was the party in possession. Even apart from the entries in the girdawars, the order passed by a public authority on inspection the brick kiln has vouched for the existence at the site in 16

kanals of land, I would take it that the plaintiff alone must be taken to be in possession, in light of the defence taken by defendants No. 4 and 5 that there was no brick kiln at the property.

5. Learned Senior counsel appearing for the respondents pointed out that the so-called exchange relied on by the plaintiff is only with the 1st defendant and the document does not even refer to the khasra numbers. I am not examining the validity of the documents any more than for seeing whether there is any semblance of truth of what the plaintiff is contending for. In the agreement of exchange, where the 1st defendant is seen to be a party, there is a reference to 16 kanals with boundaries of the adjoining owners on all four sides. It is not shown to be that the boundaries do not refer to the suit property or that the 1st defendant had any other claim of 16 kanals other than the suit property. The documents filed by the plaintiff clearly show the plaintiff's possession and the status quo ordered by the trial court, which, in my view, must mean the perseverance of status quo of the property as a brick kiln and it has to be supported. The order passed by the appellate court placing reliance only on the jamabandies which are themselves subject of challenge in the suit begs the questions of what we have to answer at the trial of whether the jamabandi entries have been correctly made or whether they are required to be corrected in the manner sought for by the plaintiff. The order passed by the appellate court is set aside and the order of the trial court is restored.

6. It is needless to state that the finding regarding possession or the entitlement to hold possession are only for the purpose of disposal of the

revision petition and they will not come in the way of the trial court to take a different view on the examination of the evidence both documentary or oral brought by the parties. In such adjudication, the findings regarding possession now entered shall not come on the way.

7. The revision petition is allowed on the above terms.

October 30, 2015
prem

(K.KANNAN)
JUDGE