IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 3659 of 2013 (O&M)
Date of decision: May 19, 2015

Jagat Singh and another

...Petitioners

Versus

Balbir 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. Y.P. Malik, Advocate,
for the petitioners.

Mr. Harkesh Manuja, Advocate,
for respondent No.2.

K. KANNAN, J. (Oral)

1. In a suit for declaration and permanent injunction that the plaintiffs are occupancy tenants qua the defendants' right in the property, they have sought for interim injunction against interference of the plaintiff's possession and placed reliance on the jamabandi for the relevant period prior to the institution of the suit showing the plaintiffs as cultivator in column 5. Admittedly, the defendants and others, including the plaintiffs themselves are shown as co-owners of their respective 1/5th share. The two courts have held the entry to be relevant for the purpose of consideration of prima-facie case of possession and granted relief of injunction.

2. The the contention of the defendants is that the plaintiffs who claim 1/5th share as co-owners cannot set up a plea of occupancy tenants

against their co-sharers. The revenue entries in the jamabandi itself shows the defendants as co-owners of the property and, therefore, the relief for injunction granted against such co-owners is incompetent.

3. There is nothing inherently untenable in law for a co-owner to claim occupancy right qua the share of other co-owners and retain his own possession as such co-owner in respect of his share. The revenue entries are surely relevant for the prima facie consideration of a case of possession and injunction granted, therefore, cannot be faulted. However, I find that the plaintiffs who claim only as occupancy tenants qua the defendants' share cannot have the benefit of injunction without undertaking the liability to pay the lease commensurate with such plea made by the plaintiffs.

4. It will be seen from the description of the property that the total extent of property which measures 128 kanals 20 marlas is comprised of agricultural land as well as non-agricultural barren land. The extent of agricultural lands themselves account for 98 kanals excluding rasta, plots and barren land. The counsel for the petitioners/defendants would not concede the issue of tenancy but on a query from the court as to what would be the lease payable, the counsel says that on a hypothetical plea of the plaintiffs being in possession as tenants, the lease would be payable at least ₹35,000/- per acre. The counsel for the plaintiffs contest the same. Without entering into a serious dialogue, to put the scale even by assessing ₹10,000/- per acre per year would be and accord the entitlement of lease to an extent of 10 acres of land referable to 1/5th share of the defendants and quantify ₹1,00,000/- as annual lease. The plaintiffs shall bear the liability to pay the said sum for the benefit of injunction that has been granted in their favour. The liability shall commence from the date of the institution of the suit till

date and the past accumulation shall be paid within a period of six months from the date of receipt of a copy of the order and the future liability shall be in two installments after harvest every year, the last installment on the Baisaki day.

5. The order passed already stands modified and the order of injunction is confirmed with the above condition. If the amount for past period within time or the future lease is not paid as directed, the order of injunction shall stand vacated. The amount shall be distributed among the respondents in the proportion to which each one is entitled.

May 19, 2015 **(K.KANNAN)**
prem **JUDGE**