

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 5415 of 2011 (O&M)
Date of decision: 27.07.2015

Shashi Goyal

... Petitioner

versus

Jaswant Singh and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

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

Mr. Sherry K. Singla, Advocate, for the respondents.

K.Kannan, J.

The revision is against an order passed by the trial Court in summary proceedings initiated under Section 6 of the Specific Relief Act. The plaintiff had purchased from one Kaka Singh property in the extent of 9 kanals 12 marlas with reference to specific khewat and khasra Nos. and filed a suit for 10 kanals of land. The plaintiff relied on khasra girdawari that made reference to the property as in the possession of his vendor. The defendant wanted to show that the khasra girdawari entries in the name of vendors were themselves subject of adjudication before the Collector during the pendency of the suit and it was held that the defendant had been entered as a party in possession by virtue of the orders of Collector.

The Court below did not rely on the orders of the Collector perhaps because that it was brought subsequent to the institution of the suit but making reference entry in the name of Kaka Sing, the Court held that the plaintiff had not taken any steps after his purchase to enter his own name in the *khasra girdawaris*. The counsel for the petitioner would argue that if Kaka Singh was in possession, the Court ought to have seen that he

was only the plaintiff's-vendor and the reference to his possession must be construed as his own possession. The counsel would also contend that yet another suit was filed by the petitioner's husband in relation to property purchased from the very same person and that suit was decreed. The argument therefore, is that the plaintiff's suit should also have been decreed.

During the pendency of the revision, the counsel for the petitioner, has brought to the attention of the Court that out of the property in dispute, he has already taken possession of all the property except 1 kanal 4 marlas and that he would be satisfied if the relief is made with reference to the remaining property. The Court before which such a contention was made has passed the order on 13.02.2015 to await the instructions from the respondent through the counsel for due consideration. Counsel appearing on behalf of the respondent has no instructions and submits that the case could be decided on merits.

In summary proceeding, the issue of possession becomes crucial. The title itself is not relevant and if the Court has found the assessment of possession in favour of the petitioner was not possible since khasra girdawaris did not register her name and that it was still standing in the name of the vendor. I cannot find any serious error in such a line of reasoning. The counsel for the petitioner would point out to me that the defendant who set up some title and ownership did not file any document, the suit for recovery of possession as a summary relief would not have to depend on what the defendant fails to prove. Under normal circumstances,

the possession of the petitioner's vendor itself would be an important factor but if that possession itself was subject of dispute and the entry which was already there is point of contention before the revenue authorities and they found that the vendor Kaka Singh was himself not in the possession to the extent contained through entries in the revenue records, although the transaction that has come about the subsequent suit, I shall still find it to be relevant for the consideration of the issue of possession. The discrepancy about the extent covered in the sale deed and the extent which is mentioned in the plaint has also not been properly explained. In view of the fact that the defendant himself has no instructions with reference to alleged 1 kanal 4 marlas, I will not pronounce either way for it, shall be open for the plaintiff to institute his own suit and establish his title with reference to the property which is still held by the respondent. The respondents are claiming the property as co-owners and if so advised, the petitioner may instead of suing for title may also apply for partition before appropriate authorities and claim the specific allotment of the property of what she claims as a owner, if there is no dispute with reference to a sale deed dated 20.03.2006.

With these observations, I find no occasion to modify the order already passed and the civil revision petition is disposed off with liberty to establish her right in the alternative forums and by different lines of action as referred to above.

27.07.2015

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(K.KANNAN)
JUDGE

