

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

**Civil Revision No.5349 of 2015 (O&M)
Date of Decision: 28.08.2015**

Jasbir Singh

.....Petitioner

Vs

Dharam Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Deepak Arora, Advocate
for the petitioner.

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?*

RAJ MOHAN SINGH, J.

[1]. The petitioner has assailed the order dated 16.07.2013 passed by Additional District Judge, Fast Track Court, Hoshiarpur dismissing the appeal against order dated 06.09.2010 passed by Civil Judge (Jr. Divn.) Hoshiarpur in a petition under Order 39 Rule 2A CPC.

[2]. Plaintiff/petitioner filed a suit for prohibitory injunction restraining the respondents from interfering in his possession in the disputed property or raising any sort of construction and also restraining them from getting or removing the fruit trees in the suit land.

[3]. It has been pleaded that ad interim injunction was granted on 12.08.2003 and the same was violated by the respondents by

removing barbed wire from the boundary wall of the disputed land and also uprooting of fruit trees planted by the petitioner. The matter was reported to the Police, but no action was taken.

[4]. Petitioner has claimed that the respondents have violated the ad interim injunction dated 12.08.2003, therefore, they be punished by way of attaching their property and selling the same in auction and also compensation to the tune of Rs.5,000/- be awarded to him.

[5]. The petition has been contested by the respondents, claiming that petitioner and respondents are co-sharers in the property. Petitioner has only share of 4 *marlas* out of total land measuring 3 *kanals* 15 *marlas*. Wrong dimensions have been given by the plaintiff and the respondents have not violated any ad interim injunction passed by the Court. Other pleadings of the plaintiff have been denied.

[6]. Issues were framed and both the parties led their evidence.

[7]. The report of Local Commissioner Ex.AW/1A shows that he only mentioned in para no.2 of his report that on northern side of the house of plaintiff, there seems to be foundation laid by someone. He also mentioned that some bricks in the shape of heap were lying near the foundation. He further stated that the wall towards northern side, adjoining the plot of plaintiff was constructed fresh from the foundation and the foundation seems to be old. He did not mention in his report whether defence poles were lying down in the property

in dispute or uprooted by the defendants. He also did not mention that fruit trees were uprooted by the defendants. The report is totally silent about removing the barbed wire from the boundary wall.

[8]. The report of the Local Commissioner has not stated anywhere that there had been encroachment in the property of the plaintiff. Statement of Local Commissioner AW-1 somehow explains the entire controversy. During his cross-examination he admitted that he had not seen any barbed wire in the property, nor saw any tree lying uprooted therein. No person was raising any construction over the suit land. The report of Local Commissioner is categorical in nature.

[9]. The evidence of the plaintiff himself as AW-2 is also wayward inasmuch as in his cross-examination he has admitted that the property is ancestral and he is one of the co-sharer along with the respondents and the property has not been partitioned as yet. In the absence of any partition, possession of one of the co-sharers would be deemed to be possession on behalf of all the co-sharers. In view of concept of co-sharership, every co-sharer would be deemed to be in possession of every inch of land subject to final partition by metes and bounds. Even possession of one of the co-sharer more than his entitlement is always subject to partition.

[10]. Simpliciter suit for injunction is not maintainable against the co-sharers unless and until plaintiff demonstrates by an evidence that he is in exclusive possession of the parcel of the land to the

exclusion and knowledge of other co-sharers. No such evidence has come on record. Even the photographs Ex.AW1-D to Ex.AW1-R clicked by AW-3 Hardial Singh are of no help to the applicant. The photographs are discrepant vis-a-vis defence poles and barbed wire and fruit trees. Photographs are wanting in terms of uprooting defence poles, barbed wire and fruit trees.

[11]. Trial Court on the basis of appreciation of evidence dismissed the application under Order 39 Rule 2A CPC and these findings have been upheld by the Lower Appellate Court on the basis of lawful interpretation. AW-2 Jasbir Singh has admitted in so many words that many cases are pending in different Court including the ancestral nature of the property. He has also admitted that he has not got the property demarcated. Further examination of Jasbir Singh revealed that he has not made any application on 15.08.2003 before the Police, nor any inquiry was marked to anyone, but in the application he has stated that he moved the application to the Police, but no action was taken.

[12]. The admitted position is that the property of the respondents adjoins the northern side of the property of petitioner and there is no demarcation conducted vis-a-vis the property situated adjoining to each other. The Lower Appellate Court has also dismissed the appeal on the basis of appreciation of evidence on record.

[13]. Both the Courts below have appreciated the material on

record. No contrary view can be taken on the basis of re-appreciation of evidence on record.

[14]. Consequently, this revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

August 28, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**