

CR No.7112 of 2014

[1]

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

**CR No.7112 of 2014
Date of decision:23.02.2015**

Babu Lal

...Petitioner

Versus

Shushila Devi

...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Akshay Bhan, Senior Advocate, with
Mr. Amandeep Singh, Advocate, and
Mr. Santosh Sharma, Advocate, for the petitioner.

Mr. Shailender Jain, Senior Advocate, with
Mr. Bhagender, Advocate, for the respondent.

Rakesh Kumar Jain, J.

This petition is filed by the defendant.

The plaintiff filed a suit for permanent injunction alleging that he is the owner in possession of the property marked by letters ABCD and EFGH, shown in red colour in the site plan bearing municipal no.632/20 (Old), 332/25 (New) measuring 250 sq. yards, comprised in khasra no.177, excluding the area of temple which falls in between the said property situated in Shakti Nagar, Gurgaon. It is averred in the plaint that earlier father of the plaintiff, namely, Yad Ram was the owner and after his death, she had inherited the suit property. She has been paying the house tax etc. to the Municipal Corporation, Gurgaon regularly in respect of the suit

CR No.7112 of 2014

[2]

property. It is also averred that the claim made by the defendant that he had purchased the suit property from Vashisth Goel S/o Ram Chander and his father had executed the lease deeds in his favour in respect of the suit property during his life time is wrong. It is, thus, prayed that the defendant be restrained from interfering in her peaceful possession.

In the written statement, the defendant-petitioner has alleged that the plaintiff is neither the owner nor in possession of the suit property, shown in red colour in the site plan attached with the plaint. He has rather alleged that there were several co-sharers in khasra no.177. Gunmala daughter and Indrawati wife of Lala Lajpat Rai Jain sold an area measuring of 00 Bigha 06 Biaswa 10 Biswansi to Vashisth Goel etc. on 12.12.1988 and the defendant had purchased an area of 1 Biswa 15 Biswansi from the said Vashistha Goel vide sale deed dated 24.02.1989 and got the mutation sanctioned on the basis of the sale deed. He also alleged that Yad Ram, father of the plaintiff, was in possession of some portion of khasra no.177 which he surrendered in favour of the defendant by way of two registered lease deeds; one dated 25.11.1985 having an area of 95 square yards and another dated 25.02.1986 having an of 160 square yards and since then the defendant is in possession of the suit property who lateron purchased the area measuring 1 Biswa 15 Biswansi and as such he is the owner and in physical possession of that area, constructed two shops and gallery with boundary wall and gate and both the properties have been shown in red colour by letters ABCD and EFGH in the site plan attached with the written statement prepared at the spot and the said properties are bearing municipal

CR No.7112 of 2014

[3]

no.631/4/20 and 631/3/20 and the defendant is regularly paying the house tax thereof. It is also alleged that MC No.632/20 is a separate and different property from the properties of the defendant.

The plaintiff filed an application for temporary injunction along with her suit which was dismissed by the trial Court on 26.08.2014 by observing that the plaintiff has failed to produce on record any evidence to prove that she became the owner of the property in question, whereas the defendant has placed on record the lease deeds executed in his favour by Yad Ram and had also argued that the property was purchased by him from Vashistha Goel which was not disputed by the counsel for the plaintiff.

Aggrieved against the order of the trial Court, the plaintiff filed the miscellaneous appeal which has been allowed by the lower Appellate Court with the observations that the plaintiff has been claiming her ownership and possession over the land bearing municipal no.632/20. She has produced on record the slips of the House Tax Register indicating the payment of house tax by her father. The lower Appellate Court has observed that on one hand the defendant is claiming to have purchased the suit property from Vashisth Goel and on the other hand he is claiming it through registered lease deeds from the father of the plaintiff. It has also been observed that the sale deed executed by Vashisth Goel in favour of the defendant shows that no boundary wall of any area having been mentioned therein and it only pertain to the sale of a share. It is also observed that the trial Court had granted *status quo* order on 15.02.2011 regarding possession of the suit property but still the defendant had constructed the building over

CR No.7112 of 2014

[4]

the area of 95 square yards and now he wanted to raise construction on the remaining area of 160 square yards and if the defendant is not restrained, then the plaintiff would suffer irreparable loss and injury.

In view thereof, the lower Appellate Court ordered the parties to maintain *status quo* with regard to the possession. Hence, the present revision petition has been filed by the defendant against the order of the lower Appellate Court.

Counsel for the petitioner has vehemently argued that the areas of 160 square yards and 95 square yards are recorded in the name of the petitioner as shown in the municipal records (Annexures P-8 & P-10) and the area of 60 square yards is shown in the name of Ram Janki Mandir which is not being touched by the petitioner. It is also submitted by him that the petitioner may be allowed to raise construction subject to the outcome of the suit as he has already started it.

On the other hand, counsel for the respondent has submitted that the trial Court had initially granted *status quo* on 15.02.2011 but the defendant took almost 9 months' time to file the written statement which was ultimately filed on 19.10.2011 and despite the *status quo* order, constructed the building over the land measuring 95 square yards. It is also submitted that in the written statement, the defendant-petitioner has urged that his properties are bearing municipal nos.631/3/20 and 631/4/20, whereas the property of the plaintiff is bearing no.632/20 which is a different property but now he is trying to say that it is the same property.

After hearing learned counsel for the parties and considering

CR No.7112 of 2014

[5]

the material placed on record, I am of the considered opinion that there is no merit in the present revision petition in order to interfere in the order passed by the lower Appellate Court as the petitioner is contesting the suit on various grounds inasmuch as in the written statement, he has alleged that the properties in his possession are bearing MC No.631/4/20 and 631/3/20, whereas property in dispute, as alleged by the plaintiff bearing MC No.632/20, is separate and different property from the properties of the defendants. He has also alleged that the property in dispute was given to him on lease by Yad Ram, father of the plaintiff and has also stated that he had purchased it from one Vashistha Goel, though the sale deed does not talk of any boundary as only the share is alleged to have been purchased. The lower Appellate Court has also found that nothing has come on record from which it could be decided as to who are the other co-sharers in Khasra No.177.

Thus, in view of the aforesaid facts and circumstances, the order passed by the lower Appellate Court restraining the defendant from raising any kind of construction during the pendency of the suit and to maintain *status quo* does not require any interference by this Court.

Resultantly, the present revision petition is hereby dismissed being denuded of any merit.

However, the trial Court is directed to expedite the trial of the suit by giving short adjournments to the parties.

February 23, 2015
vinod*

(Rakesh Kumar Jain)
Judge