

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 731 of 2014
Date of Decision : 11.02.2015

Narain Dass

....Petitioner

Versus

S. Ranjit Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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. Pardeep Rajput, Advocate for the petitioner.

Mr. Ranjit Sharma, Advocate for the respondent.

R.P. Nagrath, J.

Petitioner-defendant has invoked the revisional jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the order dated 20.12.2013 (Annexure P-5) vide which application of the petitioner under Order VI Rule 17 of the Code of Civil Procedure (CPC) has been partly declined.

2. Civil Suit no. 67 of 2009 instituted on 03.02.2009 for possession by way of specific performance of agreement to sell dated 06.02.2006, in respect of 205 Sq. yards of plot, filed at the instance of respondent-plaintiff is pending before the trial Court. An amount of ₹ 1,50,000/- was paid as part of sale consideration at the time of agreement out of the total amount of ₹ 2,65,000/-. The sale deed was to be executed by 06.03.2006.

3. The version of the petitioner in his written statement is

that he purchased a plot measuring 345 sq. yards vide sale deed dated 07.06.1999. The petitioner had sold 142 sq. yards of the plot in favour of the respondent-plaintiff vide sale deed dated 24.08.2001 and it was at that time that the respondent-plaintiff seems to have obtained signatures/thumb impression of the petitioner on certain blank papers/stamp papers for the purpose of execution of an affidavit of the petitioner-defendant in respect of his ownership, for the sanction of mutation on the basis of sale deed of the year 2001.

4. The respondent-plaintiff has already concluded his evidence and the case was at the stage of evidence of the petitioner that he filed application dated 16.03.2013 seeking to incorporate subsequent events and also to set up a counter claim for recovery of possession on that basis. According to the petitioner, the respondent-plaintiff took forcible possession of plot in question during pendency of the suit on the intervening night of 09-10.03.2013, by breaking the intervening wall in between the plot of plaintiff and defendant. The goods belonging to petitioner-defendant were also removed from there. These included 4-5 iron girders, 6-7 wooden batons and some *balas*. Application dated 12.03.2013 was also made to the Commissioner of Police in that regard.

5. Vide impugned order, the trial Court allowed the prayer to make correction of the date of previous sale deed from 24.08.2001 to 22.08.2001. With regard to the prayer to

incorporate the aforesaid subsequent events, learned trial Court observed as under:-

“.....The present suit revolves around the issue whether agreement to sell dated 06.02.2006 with respect to private plot no. 71 min and 72 min having area of 205 sq. yards was executed by the defendant in favour of the plaintiff or not. If the plaintiff would prove this factum only then he would be entitled to the relief claimed by him in the plaint. The bare contention of the defendant that he had been forcibly dispossessed by the plaintiff from the disputed plot and intervening wall in between the plot of plaintiff and defendant has been demolished is not suffice without bringing anything on record to prove the aforesaid factum. Moreover, the defendant has equal efficacious remedy to file the separate suit for possession.”

6. After having heard learned counsel for the parties at considerable length, I do not find any merit in the instant petition.

7. The disputed property for which suit for specific performance was filed is a vacant plot and if the respondent-plaintiff is ultimately not granted the relief of specific performance by the trial Court, the assumption would be that possession follows title. In any case, if the petitioner-defendant is able to bring on record the aforesaid circumstance with regard to the subsequent event, the trial Court would always be competent to mould the relief accordingly.

8. It may be seen that the prayer in the suit is to seek possession by way of specific performance of agreement to sell.

The respondent-plaintiff nowhere asserted in the plaint that possession of the land was delivered to him at the time of execution of the agreement. The respondent-plaintiff has even stated that there was no wall existing in between the plot owned by respondent-plaintiff and the plot in question. The allegation of lifting of articles belonging to the petitioner has also been denied. It was rather stated that a false complaint to the police was made and the petitioner-defendant has in fact not appeared before the police in the enquiry.

9. The evidence of the respondent-plaintiff already stands closed. The petitioner was also granted three opportunities i.e. 5.3.2013, 16.3.2013 and 17.4.2013 for his evidence when he ultimately filed the application for amendment for which there was absolutely no necessity. The application for amendment seems to have been filed simply to make a ground for adjournment after the petitioner was granted sufficient adjournments for his evidence.

10. In view of the aforesaid discussion and the nature of the property in question, I do not find any ground to interfere in the discretion exercised by the trial Court, though for different reasons. With the aforesaid observations, the instant petition is dismissed.

February 11, 2015
jk

(R.P. NAGRATH)
JUDGE