

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

**CR No.7554 of 2014 (O&M)
Date of decision: 09.02.2015**

Smt. Rajwinder Kaur

....Petitioner

Versus

Baldev Singh

...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. B.M.Vinayak, Advocate for the petitioner.

Mr. Ashish Aggarwal, Advocate for the respondent.

Rakesh Kumar Jain, J. (Oral)

The present petition is against the order dated 5.08.2014 granting temporary injunction restraining the petitioner-defendant from interfering into peaceful possession of the respondent-plaintiff over the suit property.

In short, admittedly there is a sale deed dated 29.04.1994 in favour of Rajwinder Kaur and Gurmeet Kaur. The present respondent is the husband of Gurmeet Kaur who filed a suit for permanent injunction against Rajwinder Kaur to restrain her from interfering his peaceful possession. In para 6 of the plaint, it is categorically mentioned that the possession of the plaintiff was being threatened by the brother of the defendant, namely, Chanan Singh, who is acting at the behest of Rajwinder Kaur but presently Chanan Singh is not a party to the suit and the injunction order has been

granted by the lower Appellate Court against the person who is not in India.

Be that as it may, counsel for the respondent has submitted that another suit has been filed by Gurmeet Kaur herself against Rajwinder Kaur for declaration claiming that she is owner of the entire property and sought a rectification in the sale deed dated 29.04.1994 in which name of Rajwinder Kaur has also been mentioned as co-sharer. Apparently the said suit has been filed alleging that the entire sale consideration was paid by Gurmeet Kaur and, therefore, Rajwinder Kaur has no share at all in the said property.

Counsel for the respondent has also submitted that there was an error in the order passed in the suit for declaration under Order 39 Rule Rule 1 & 2 restraining Rajwinder Kaur from interfering into possession of the plaintiff as the Civil Judge (Jr. Divn.), Amritsar, vide her order dated 30.10.2014, directed the defendant to maintain status quo till further order with regard to the suit property as detailed in the head note of the plaint.

Counsel for the petitioner has thus argued that firstly the owner should have come forward to file the suit for declaration and permanent injunction and secondly, the suit filed by her husband without giving power of attorney by the said Gurmeet Kaur is not maintainable.

On the other hand, counsel for the respondent has submitted that the plaintiff-respondent, being in possession, can always protect his possession by filing a suit for injunction even as a trespasser.

After hearing learned counsel for the parties and examining the record, I am of the considered opinion that the law regarding to protection of possession by a trespasser against the true owner has been deprecated by the Supreme Court and it has been held that a person, in possession of property without any right, title, grant, lease, can protect his possession against the entire world except the true owner.

The Supreme Court in the case of **Jit Singh Vs. Sardara Singh**, 2003(3) RCR(Civil) 566 has been held that no injunction can be granted to the trespasser against a true owner and in this case Rajwinder Kaur has half share in the property in question and Gurmeet Kaur has filed a separate suit in another Court alleging that the entire property was purchased by her out of her own funds and has become the owner of the suit property asking for correction of sale deed to delete the name of Rajwinder Kaur. Till the said suit is decided, Rajwinder Kaur would remain owner of the half share of the property in question, and no injunction can be granted to the co-sharer against a co-sharer and the only remedy available to the respondent is to file a suit for partition. Thus, the order of injunction passed by the lower Appellate Court is totally erroneous.

In view, thereof, the present revision petition is allowed and the impugned order passed by the lower Appellate Court is hereby set aside.

February 09, 2015
Manoj Bhutani

(Rakesh Kumar Jain)
Judge