

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.8489 of 2014 (O&M)
Date of Decision: 28.01.2015

Raj Kumar and others

...Petitioners

Versus

Jogi Ram and another

...Respondents

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. C.B. Goel, Advocate
for the petitioners.

R.P. Nagrath, J.

Petitioners have invoked the jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the order dated 18.11.2014 (Annexure P-6) passed in appeal by the Additional District Judge affirming the order passed by the trial Court whereby application for grant of ad interim injunction filed by the respondents has been allowed.

The respondents filed a suit for permanent injunction claiming themselves to be in possession of the land in dispute measuring 01 kanal 18 marlas comprised of Killa No.20/2 The land in question is stated to be in possession of respondents since the time of their fore-fathers being Gair Morusi. They had sown paddy

crop over the land at the time of institution of the suit. Since there was a threat of forcible possession from the petitioner-defendants, suit for injunction was filed and prayer was made for grant of ad interim injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.

The petitioners in the written statement stated that they are in possession of the suit land as co-sharers and have grown vegetables and maize crop. The suit land is surrounded by other land of petitioners on three sides. The source of irrigating the suit land is from the tubewell of petitioner-defendants installed in Killa No.80/2.

I have heard learned counsel for the petitioners, carefully perused the impugned orders and also the paper book.

Learned counsel for the petitioners referred to the Aksh Shijra Annexure P-8 for suggesting that respondent-plaintiffs do not have any access to Killa No.20/2 in question and, therefore, the better course should have been to direct the parties to maintain status quo with regard to possession instead of adopting a categorical view in favour of respondent-plaintiffs.

The contention of learned counsel seems to be attractive at the first blush, but cannot be accepted in the facts and circumstances of the case.

The learned Courts below referred to the Jamabandi of the suit land for the year 2010-11 showing possession of respondent-plaintiffs as Gair Morusi. The learned trial Court rightly observed that

there is presumption of correctness to the entries in the Jamabandi, though there may be scope of rebuttal during the course of evidence. It has also been rightly observed that the question whether possession of respondent-plaintiffs over the land is as tenants or otherwise, is to be determined during the course of trial. The appellate Court has also remarked from perusal of the revenue record, that respondent-plaintiffs are entered in possession of the suit land for the past more than 80 years.

When the matter was listed on 16.12.2014, learned counsel for the petitioners sought time to place on record Jamabandi and Khasra Girdawari in respect of all khasra numbers as mentioned in Aksh Shijra Annexure P-8 upon which petitioners wanted to rely. No such revenue record has been produced in support of the authenticity of Aksh Shijra Annexure P-8.

The learned appellate Court has dealt with the contention raised on behalf of petitioners that the killa number in question is surrounded by three sides by the land of petitioners and observed as under:-

“Merely from the fact that the suit property is surrounded on three sides with (from) the property of appellants-defendants, no presumption can, be drawn that the suit property also belongs to the appellants-defendants. What shall be the effect of taking stand of becoming owner of the suit property by respondents-plaintiffs as taken by them in the replication is concerned, the same is to be

adjudicated upon by the learned trial court. Whether this plea is tenable or not shall be adjudicated upon at the later stage, during the proceedings of the case. However, at this stage, only it is to be seen whether there is any illegality or infirmity in the order passed by the learned trial court or not.

Though, this Court does not want to go deep into the aspect about approach to the suit property. However, Aksh Shijra, the copy of which is placed on the file, shows that there is some approach to the suit property. Even otherwise, this fact is also to be adjudicated upon by the trial court, after taking evidence.”

The revisional jurisdiction to upset the prima-facie determination on the issue by both the Courts below and applicability of the other essential ingredients for disposal of prayer of ad interim injunction is quite limited. There is nothing to suggest that the Courts below have not applied the relevant principles on the subject while disposing of the application for injunction.

No merit. Dismissed.

28.01.2015
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(R.P. Nagrath)
Judge