

CR-945-2015 (O&M)

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

**CR-945-2015 (O&M).
Decided on: April 28, 2015.**

Amrik Singh

..... Petitioner(s)

Versus

Ajaib Singh and others

..... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.P.S.Ghuman, Advocate,
for the petitioner.**

**Mr.Rajbir Singh, Advocate,
for respondent Nos.1 & 2.**

**Mr.Navjot Singh, Advocate,
for respondent No.3.**

M.M.S. BEDI, J (ORAL).

This is plaintiff's revision petition questioning the legality of the order Annexure P7 passed by the lower appellate Court dismissing the application for interim injunction though the trial Court had granted interim injunction to the petitioner restraining the defendants-respondents from interfering in possession and cultivation of the property in dispute.

Brief facts, necessary for the adjudication of the present revision petition, are that the plaintiff- petitioner had filed a suit for permanent injunction restraining the defendants Ajaib Singh, Bachan Singh and Gram Panchayat of Village Bachoana, Tehsil

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Budhlada, District Mansa, from interfering in the peaceful possession of the plaintiff- petitioner in the land measuring 11 kanals 6 marlas mentioned in the heading of the plaint claiming that he had obtained possession of the land in an auction for 1 year on payment of amount of Rs.7025/- vide receipt No.13 dated 19.5.2014. The plaintiff- petitioner claim that he had sown paddy crop and that the defendants be restrained from harvesting the same. The trial Court vide order dated 10.9.2014, allowed the application observing that prima facie the Gram Panchayat was owner of the suit land as per the revenue record. Relying upon the receipt and resolution of the Gram Panchayat, it was observed that the plaintiff- petitioner had obtained the suit land in auction.

It has been informed that in view of the interim injunction granted vide order dated 21.10.2014 the plaintiff- petitioner was permitted to harvest crop and was directed to furnish indemnity bond in the sum of Rs.2 lacs as the defendant Nos.1 & 2 claimed that crop had been sown by them and had been wrongly harvested under the garb of the interim order passed in favour of the plaintiff- petitioner.

Defendant Bachan Singh and his brother filed an appeal against the interim injunction order. The said appeal was allowed vide impugned order observing that the plaintiff- petitioner had failed to establish that he had been handed over the actual physical possession of the land in dispute. The lower Appellate Court

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observed that the plaintiff- petitioner had not been able to establish the delivery of possession by the Gram Panchayat and that the defendants Nos.1 & 2 had never delivered possession to the plaintiff and the possession continued to remain with the defendant Nos.1 & 2. Strong reliance has been placed on application dated 19.6.2014, submitted by the plaintiff-petitioner to the BDPO for demarcation of the suit land wherein the plaintiff- petitioner had submitted that he had got land on lease by way of auction but defendant Bachan Singh had stopped him from cultivating the land. The said application was sent by BDPO to the Tehsildar, Budhladha, requesting for demarcation of the suit land. On the basis of the said application the lower appellate Court formed an opinion that the plaintiff was not in possession of the suit land till 19.6.2014 and he had filed the suit on 28.6.2014. On account of absence of any document of possession, the interim injunction application of the plaintiff was dismissed considering the observations of the trial Court that the plaintiff might have sown the crop after auction was set aside. Taking into consideration the necessary ingredients to determine the application under Section 39 Rules 1 & 2 CPC, the lower appellate Court held that the plaintiff- petitioner prima facie failed to prove his possession, the balance of convenience and irreparable loss which was likely to be caused to him.

The plaintiff- petitioner has now challenged the order of the lower Appellate Court relying upon the resolution of the

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Gram Panchayat claiming that security proceedings had been initiated against the private defendants on 13.10.2014.

Learned counsel for the private defendant has submitted that after the stay was vacated the defendants had sown wheat crop which is ripe and is ready to be harvested. Vide interim order passed by this Court, the parties had been directed not to harvest the standing crop. The defendants claim that irreparable loss will be suffered by the defendants in case they are not permitted to harvest the crop.

Counsel for the Gram Panchayat has struck to the stand taken by the Gram Panchayat in the written statement to the effect that vide resolution and auction of the Gram Panchayat, the plaintiff had been given the land in dispute in auction. Receipt of Rs.7025/- as theka amount for Shamlat land for the year 2014-2015 has been claimed to be a valid document by the counsel for the Gram Panchayat. A copy of the resolution Annexure P6, has been stated to be correct.

I have heard the learned counsel for the parties and considered the facts and circumstances of the case.

The lower appellate Court has vacated the stay in favour of the plaintiff- petitioner on 27.11.2014. In all probabilities, after the vacation of the stay the crop must have been sown by the person in actual physical possession. Since there was no interim injunction in favour of the plaintiff-petitioner and no prima facie

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evidence has been brought to the notice of this Court or the Courts below regarding the delivery of actual physical possession, it can be presumed that person who had been in actual physical possession prior to the resolution was in actual physical possession. It is pertinent to observe here that the period of lease of one year 2014-2015 has expired by now. The Gram Panchayat is entitled to re-auction the property in dispute. At present, the sole controversy which is required to be resolved is as to who should be permitted to harvest the standing crop as a stay had been granted on 11.2.2015, by a Coordinate Bench of this Court.

Since prima facie, the plaintiff- petitioner has not been able to establish the delivery of actual physical possession pursuant to resolution and alleged auction of the Gram Panchayat land to him and there being no interim injunction in his favour on 27.11.2014, it will be expedient in the interest of justice, to permit the private defendants to harvest the crop sown on the land in dispute measuring 11 kanals 6 marlas mentioned in the heading of the plaint subject to the condition that they will furnish an indemnity bond for a sum of Rs. 2 lacs to the satisfaction of the trial Court that in case suit of the plaintiff is decreed they would compensate the plaintiff-petitioner equivalent to the costs of the crop regarding which they would maintain a record with prior intimation to the Gram Panchayat and BDPO concerned.

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In view of the plaintiff- petitioner having filed an application to the BDPO for delivery of possession and no document having been shown by him before the trial Court regarding possession having been delivered to him by Gram Panchayat, prima facie, the plaintiff- petitioner does not have a strong case in his favour. Balance of convenience also does not lie in his favour, as such there is no ground for interference in the impugned order dismissing the application of the plaintiff- petitioner.

The petition is dismissed. Since the period of lease of 2014-15 is to expire this month, it is directed that the auction for the next year and delivery of possession by the Gram Panchayat of the land in dispute, will be conducted under the supervision of BDPO of the area who would report the same to the DDPO and would supervise the actual auction and delivery of possession to the successful bidder for the year 2015-16 without prejudice to the rights of the parties.

April 28, 2015.
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(M.M.S. BEDI)
JUDGE