

COCP No.759 of 2013 (O&M)

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

**COCP No.759 of 2013 (O&M)
Date of decision:24.02.2016**

Dewan and others

...Petitioners

Versus

S.K.Chahal and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ashok Kaushik, Advocate,
for the petitioners.

Mr. R.K.S. Brar, Addl. A.G., Haryana.
for the petitioner.

Mr. Adarsh Jain, Advocate,
for the applicant/respondent No.3.

Rakesh Kumar Jain, J.

The petitioners filed Suit No.RBT-306 dated 19.07.2011 for permanent injunction against respondents No.3 and three others, alleging that they are the nearest reversioners of Smt. Gangadei, who continued in possession over the land in question as a tenant and had executed a Will in their favour in respect of her possessory rights in the suit property. The suit was contested by respondent No.3 and others on the ground that they are the owners of the suit land and are in its cultivating possession after the death of Gangadei and the petitioners are neither reversioners nor having any interest in the suit land as Gangadei had never executed any such Will in their favour. The petitioners had also filed an application for

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temporary injunction for restraining the defendants in the suit land from dispossessing them forcibly. The said application was dismissed by the Civil Judge (Junior Division), Hathin on 27.08.2011 and the miscellaneous appeal arising out of that order was dismissed by the Additional District Judge, Palwal on 27.10.2012. The petitioners then filed CR No.7444 of 2012 before this Court, in which notice of motion was issued on 29.01.2013 for 05.03.2013 and *status quo* regarding possession was ordered to be maintained till the next date of hearing.

The petitioners have filed this contempt petition for the willful disobedience of the order dated 29.01.2013. It is alleged that respondent No.1 has ordered attachment of the land in question on 11.02.2013 in the proceedings initiated under Section 145 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."). On 22.07.2014, this petition was ordered to be heard along with CR No.7444 of 2012. The respondent No.3 filed an application bearing CM No.11937-CII of 2015 praying for dismissal of the petition on the ground that CR No.7444 of 2012 has already been dismissed on 18.05.2015. The said order passed in the CR No.7444 of 2012 on 18.05.2015 is as under:-

“Learned counsel for the parties have submitted that this petition has been rendered infructuous as the main suit has since been disposed of.

Dismissed as infructuous.”

As a matter of fact, the main suit filed by the petitioners for permanent injunction has been dismissed by the trial Court on 30.04.2015 in which the only important issue was as to “*whether the plaintiff is entitled to*

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a decree for permanent injunction restraining the defendants from interfering in their possession over the suit property?OPP”.

After taking into consideration the voluminous documentary evidence besides oral evidence led by both the parties, the trial Court recorded a finding on issue No.1 that “*the fact that the plaintiffs are not related to Gangadei in any manner has been admitted by plaintiff no.1/PW1. He further admitted that he does not reside in village Swamika since last many years, therefore, it shall not be reasonable to raise any presumption that he is in cultivating possession of the suit land. To add to it, PW1 admits that Gangadei died more than 30 years ago, so this in itself rebuts the presumption of correctness of the revenue record in respect of the column no.5 of the jamabandies and the khasra girdhawries which have since last several years showed Gangadei to be cultivating the land despite the fact that she has died more than 30 years back. The defendants being the owners of the suit property as per the revenue record, cannot in any manner be restrained from making use of their property when the listed tenant has died several years back and there is no heir who has apparently succeeded to such tenancy. The claim of the plaintiffs as regards the existence of a will in their favour is not under consideration in the present suit, as the plaintiffs were not required to prove the source or the basis of their entitlement to the possession of the suit property; what was required of them was substantive evidence which could indicate with certainty their possession over the suit property, but they have failed to do so”.*

Thus, the aforesaid issue was decided against the plaintiff(s) by

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the trial Court.

Once it has been held that the plaintiffs-petitioners were not in possession of the suit land, therefore, they cannot agitate any violation of the order passed by this Court especially when the Court had only asked for maintaining *status quo* and there was a law and order situation in the village because of repeated attempts of quarrel by the petitioners as it has been observed by respondent No.1 in its order that earlier an order was also passed on 19.11.2012 under Sections 107/151 Cr.P.C.

Keeping in view the totality of the facts and circumstances, this Court is of the view that it is not a case of willful disobedience on the part of the respondents as the petitioners have failed to prove their possession over the suit land and even ultimately their suit for permanent injunction has been dismissed.

Hence, the present contempt petition is hereby dismissed being denuded of any merit.

Rule is discharged.

February 24, 2016
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(Rakesh Kumar Jain)
Judge