

CR-1588-2015

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-1588-2015

Date of decision : 25.01.2016

Satinder Singh

... Petitioner

Versus

Neelam Kumari and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms.Mandeep Kaur Kahlon, Advocate
for the petitioner.

REKHA MITTAL. J.

The present petition has been directed against the order dated 22.01.2015 (Annexure P4) passed by the District Judge, Pathankot whereby the appeal preferred by the petitioner against order dated 15.04.2014 (Annexure P2) passed by the Civil Judge (Junior Division), Pathankot dismissing application of the petitioner under Order 39 Rule 1& 2 of the Code of Civil Procedure (for brevity 'CPC'), has been dismissed.

The petitioner filed a suit for permanent injunction restraining the respondents-defendants from interfering in his peaceful possession of the suit property. It is averred that the petitioner purchased a plot measuring 0.67 marlas (out of 4 marlas) from Sameer Masih son of Siraj Masih, marked as ABCDEF shown in blue colour in the site plan

attached with the suit. The said house depicted in blue colour is in physical possession of the petitioner without any hindrance and objection. The petitioner also purchased ownership and possessory rights in a plot measuring 15 marlas from Sameer Masih and Sonu Masih, his wife vide agreement to sell dated 08.03.2013 and since then he is enjoying possession of the said property. When the petitioner started construction in the suit land about an year ago, the respondents threatened him to stop construction and tried to dispossess him from the suit property to which they have no right.

An application under Order 39 Rule 1 & 2 CPC for grant of ad-interim injunction was filed, dismissed by the learned trial Court vide order dated 15.04.2014 and the order passed by the trial Court has been affirmed in appeal by the District Judge, Pathankot vide order impugned.

Counsel for the petitioner contends that as the petitioner purchased specific portion of the suit property measuring 0.67 marlas from its previous owner by way of a sale deed and further agreed to purchase 15 marlas plot from Sameer Masih and Sonu Masih vide agreement dated 08.03.2013 and possession thereof was delivered in his favour, the petitioner is entitled to enjoy possession of the suit property without any intervention by the respondents who claims themselves to be co-sharers in the land in dispute. It is further argued that house of the petitioner is in existence over land measuring 0.67 marlas purchased vide sale deed dated 14.03.2013 and the petitioner is in exclusive possession

over the said portion, thus the respondents have no right to interfere in his possession in any manner whatever without seeking partition of the joint property in accordance with law. According to learned counsel, the orders passed by the courts below are not only erroneous but perverse as well, therefore, liable to be set aside.

I have heard counsel for the petitioner, perused the records particularly the orders impugned in the petition.

The learned appellate Court has noticed that the petitioner raised the plea that he has raised construction over the plot purchased by him vide sale deed dated 14.03.2013 depicted as blue in the site plan appended with the plaint but there is no material on record except photo copies of electricity bills to substantiate his contention in this regard and in the electricity bills, there is no reference to any plot number or house number in order to connect the electricity bills with the suit property. In regard to plea that the petitioner agreed to purchase 15 marlas of land from Sameer Masih and Sonu Masih comprised in khasra No. 13R/25/2 as per jamabandi placed on record, it is held that Sonu Masih has no share in the said property whereas Sameer Masih has already sold his share to the extent of one marla by selling land measuring 0.67 marlas to the petitioner and another 0.33 marlas in favour of one Rajesh Kumar and thus, Sameer Masih was not competent to sell 15 marlas to the petitioner on the basis of agreement of sale. It has also been noticed that Sameer Masih is not prima-facie proved to be in exclusive possession of the disputed portion

in order to deliver possession thereof to the petitioner either on the basis of sale deed or the agreement of sale.

The petitioner has not placed on record any documents to successfully counter the findings of the Courts below in regard to his exclusive possession on any portion of the joint land, therefore, no fault can be found in the observations by the courts that the petitioner is not entitled to get any injunction against the respondents who are also co-sharers in joint possession of khasra No.13R/25/2 according to jamabandi, placed on record. I do not find any illegality much less perversity in the impugned orders as would warrant intervention in exercise of supervisory jurisdiction by the Court.

In view of what has been discussed hereinabove, finding no merit, the petition is dismissed with no order as to costs.

However, nothing stated in this order shall prejudice final adjudication of the case on its merits.

(REKHA MITTAL)
JUDGE

January 25, 2016.
Davinder Kumar