

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R.No.134 of 2014 (O&M)

Date of Decision: February 04, 2016

Onkar Singh & others

...Petitioners

Versus

Mohan Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of 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.Vaibhav Sehgal, Advocate,
for the petitioners.

Mr.Malkeet Singh, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

The petitioner-defendants are aggrieved of the order dated 18.11.2013 (Annexure P-1), whereby the application moved by the respondent-plaintiffs under Order 23 Rule 1 of the Civil Procedure Code for withdrawal of the suit with liberty to file a fresh, has been allowed.

Mr.Vaibhav Sehgal, learned counsel appearing on behalf of the petitioner-defendants submits that the original suit was filed on 19.11.2012 seeking permanent injunction against the defendants from taking forcible possession and interfering in the peaceful possession, except in due course of law and para No.4 of the plaint mentions about the alleged partition between the co-sharers and even the partition was also challenged in the injunction suit. However, in the application, which has been erroneously allowed vide impugned order, no formal defect has been pointed out for

withdrawal of the suit. At the best, they could have sought the partition, but not in the manner and mode which has been adopted. The partition proceedings remain stayed before the Revenue Court, which ultimately attained finality.

Mr.Malkeet Singh, learned counsel appearing on behalf of respondent No.1 submits that the application was moved to withdraw the suit with liberty to file a suit for declaration challenging the partition proceedings by adding certain defendants and there was inherent defect and rightly so, the application was filed, which was allowed.

I have heard the learned counsel for the parties and appraised the paper book and am of the view that the impugned order, under challenge, is not sustainable in the eyes of law as no inherent defect has been pointed out in the application. Para 4 of the plaint reveals that the plaintiffs, being tenants, have challenged the partition proceedings. Para 4 of the plaint reads thus:-

“4. That again on 12-11-2012 the defendants reached at the spot and they contacted the plaintiff and told the plaintiffs that they have an order of the revenue court for the partition of the suit land and they directed the plaintiff to vacate the possession of the suit land on the basis of that partition order and also threatened that they would take the forcible possession of the suit land in case the plaintiff fails to hand over the possession himself but the plaintiff refused to hand over the possession to them on the basis of the alleged partition order because of the following reasons:-

(a) That the alleged partition between the alleged co-sharers is not an ejectment order against the tenant/plaintiff. The rights of the tenant as well as of Saunjidar are protected under the provisions of law and thus he cannot be ejected from the suit land until and unless a specific order is obtained

regarding his ejectment from the suit land by the court of competent jurisdiction.

(b) That the plaintiff was not made party intentionally in the partition proceedings though he was a necessary party in the partition proceedings since he is in actual possession of the suit land and his possession is very much recorded as tenant and partly as \ Saunjidar in the revenue record. The persons who are in possession of the suit land in the capacity of tenant or in the capacity of Saunjidar are necessary party in the partition proceedings. Moreover, since the plaintiff was not made a party in the said partition proceedings and thus the alleged order of partition can not be enforced against the rights of the plaintiff. No notice was served upon the plaintiff before passing the alleged partition order by the Revenue Court, and the plaintiff came to the knowledge of the alleged partition order by the first time on 12-11-2012 at the so declaration of the defendant.

(c) That the defendants were not co-sharers in the land in dispute and they had no right to get this land partitioned from the revenue court as alleged. The entire area of the suit land is a Saunji land in which all the persons shown in the column of cultivation in the Jamabandi have become the owners of the suit land. The rights of the defendants in the suit land have been extinguished since from the time of their forefathers. That is why the defendants intentionally ignored the plaintiff in this proceedings by not making him a party in the partition proceedings so that he should not raise any such objections in the partition proceedings. Therefore the alleged partition order is not a valid order, it has no legal force particularly against the rights of the plaintiff in the suit land. Copies of Khasra Gurdawari are attached herewith.”

At the best, the respondent-plaintiffs could have amended the
plaint by incorporating the prayer of declaration and not in the manner and
mode, which has been adopted as a valuable right has accrued in their

favour. Such a factum at the instance of the defendants should not be permitted.

Keeping in view the aforementioned facts, the impugned order is set-aside. The application filed under Order 23 Rule 1 CPC is dismissed.

Revision petition stands allowed.

February 04, 2016
ramesh

(AMIT RAWAL)
JUDGE