

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

Civil Revision No.1991 of 2016 (O&M)

Date of Decision: March 31st, 2016

Harbhajan Singh & others

...Petitioners

Versus

Parminder 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.Arun Jain, Senior Advocate with
Mr.Vaibhav Sehgal, Advocate,
for the petitioners.

Mr.Sumeet Mahajan, Senior Advocate with
Mr.Amit Kohar, Advocate,
for respondent No.1.

Mr.Ashish Kapoor, Advocate,
for respondent No.43-Caveator.

AMIT RAWAL, J.

The petitioner-plaintiffs are aggrieved of the dismissal of the application under Order 39 Rule 1 & 2 CPC filed along with the suit seeking the following reliefs:-

- i) Suit for declaration that the plaintiffs are the co-owners/co-sharers to the extent of 90 shares equivalent to 680 sq.yards, out of 793 shares (1B-19B-13B) equivalent to 5997 sq.yards, comprised in Khasra No.337 (0B-12B-0B), 341 (0B-8B-1B), 342 (0B-19B-12B) as per jamabandi for the year 2009-2010, situated at Vill.Daad, Hadbast No.279, Tehsil and District Ludhiana;

- ii) Suit for separate possession by partition of the shares of the plaintiff to the extent of 90 shares equal to 680 sq.yards out of 793 shares equivalent to 5997 sq.yards;
- iii) Suit for the grant of Permanent Injunction restraining the defendants from raising any construction over any part of the suit property and further restraining the defendant no.43 from granting any permission to defendant no.1 for installing any Petrol Pump in part of the suit property;
- iv) Suit for declaration that the entries existing in the jamabandi/ revenue record of the year 1959-60 onwards in Khana Kashat are illegal, incorrect and are liable to be rectified as neither Ishar Singh s/o Mihaan Singh nor Mehar Singh s/o Ishar Singh defendant no.21 had any right to sell any part of the suit property comprised in Khasra No.337, 341, 342 situated at Village Daad, Tehsil and District Ludhiana, as entered in the jamabandi for the years 1959-60 thereby exceeding their share in the total property

And

Suit for declaration that the following sale deeds are not binding on the co-sharers:

- (a) alleged sale deed bearing wasika no.3112 dated 9.9.1976 executed by Mehar Singh defendant no.21 exceeding his share in the land comprised in khasra no.342 in favour of Daljit Kaur and Amarjit Kaur.
- (b) alleged sale deed bearing wasika no.1579 dated 21.6.1968 executed by Mehar Singh defendant no.21 exceeding his share in the land comprised in khasra no.341, in favour of Harnam Singh s/o Nathu.
- (c) alleged Tabdeel Malkiyatnama bearing wasika no.1515 dated 27.4.2011 executed by Daljit Kaur in the land comprised in khasra no.342 in favour of Parminder Singh Garcha.
- (d) alleged Mutation No.17972 dated 31.1.2011 of inheritance of Amarjit Kaur in favour of Onkar Singh defendant no.2.
- v) Suit for declaration that the said entries should be

rectified as per the actual shares of the parties and any sale made by Mehar Singh or any of his successors as well as entries of mutations in the names of alleged purchasers are illegal, void, ineffective, inoperative qua the rights of the plaintiffs and that the plaintiffs continue to be the co-sharers/co-owners of the suit property to the extent of 90 shares equivalent to 680 sq.yards out of the total land measuring 1B-19B-13B till actual partition is effected between the parties.

Mr.Arun Jain, learned Senior Counsel assisted by Mr.Vaibhav Sehgal, Advocate, appearing on behalf of the petitioner-plaintiffs submits that the contest in the suit and as well as in the present revision petition is between the petitioner-plaintiffs and defendant Nos.1, 2 and 43. The suit is based upon the documentary evidence, whereby the plaintiffs are claiming themselves to be co-owners and co-sharers and a separate possession by way of partition, much less permanent injunction and declaration. The entries existing in the jamabandi for the year 1959-60 onwards have been challenged, much less sale deeds, as noticed above, on the premise that they all are the co-owners of the property comprised in Khasra Nos.337, 341 and 342 purchased through sale deeds in various khasra numbers, including aforementioned khasra numbers of an area 680 sq.yards (90 shares). As per sale deeds dated 15.6.1987, 13.11.1987 and 4.5.2007, there were/are six co-sharers.

Few days prior to the filing of the suit, it transpired that Mehar Singh son of Ishar Singh (co-sharer) executed certain illegal and void documents, in essence had executed the sale deed for much more than the share, i.e., 392 shares + 161 Biswasi against 217 shares equivalent to 1641 sq.yards. All the purchasers, namely, Harnam Singh son of Nathu, Amarjit Kaur wife of Sukhdev Singh son of Kehar Singh, Daljit Kaur wife of

Jagdish Singh son of Kehar Singh could not have acquired the right and share beyond what Mehar Singh had and in this regard, referred the revenue record, Ex.P9, much less sale deed to show that the suit property is joint and the partition has never been effected, whereas on the contrary, defendant No.1 claims the interest in the suit property only on the basis of Tabdeel Malkiyatnama executed by his mother Daljit Kaur in his favour on 27.4.2011 qua the land comprised in Khasra No.342, whereas vide sale deed dated 9.9.1976, Daljit Kaur had purchased the share in the suit property from Mehar Singh, who had only 1/6th share in the suit property. This fact is evident from the revenue record and, thus, Daljit Kaur and Amarjit Kaur have only become co-sharer to the extent of 1/12th share each in the suit property and Tabdeel Malkiyatnama cannot exceed more than the share than what Daljit Kaur had acquired and in such situation, the contesting defendants cannot be permitted to raise the construction or install the Petrol Pump during the pendency of the partition as it would alter and change the nature of the property.

He further submitted that the observation of the Court below that raising of the construction would increase its value and utility would be meaningless in view of the revenue record showing the joint khewat/khata. The petitioners, in view of the revenue record, have been able to make out the ingredients of Order 39 Rule 1 & 2 CPC, but the Courts below erroneously failed to notice this fact. The jamabandi for the year 1959-60 shows that there were 71 khasra numbers. In the year 2009-10, only three (3) khasra numbers have been shown. The finding that it has not been explained as to how these khasra numbers have been separated is totally erroneous as there is no reference to the revenue record. It is in these

circumstances, the revenue entries have been sought to be challenged. Unless and until the revenue entries are rectified, the Tabdeel Malkiyatnama cannot be enforced, much less acted upon and, therefore, the subsequent vendee, who has been allotted the Petrol Pump cannot be permitted to change the nature of the property. The sale deed dated 8.9.1976 shows that Mehar Singh son of Ishar Singh son of Mihan Singh had sold land measuring 4 kanals 9 marlas comprised in khasra No.14//13/2, 14/1, 18/1 and old khasra No.342 to Daljit Kaur and Amarjit Kaur. Amarjit Kaur died while Daljit Kaur is alive. Amarjit Kaur had left behind Onkar Singh defendant No.2. By way of alleged sale deed, the land measuring 2692 sq.yards has been purportedly sold by Mehar Singh in connivance and collusion with the revenue officials and accordingly mutation has also been wrongly entered and sanctioned. Both the Courts below have ignored the vital facts and declined the injunction application. In support of his contentions, relied upon the judgments rendered by this Court in **Mohan Lal Versus Preet Kumar**, 2008(3) Law Herald (P&H) 1957 to contend that as a general rule, an injunction cannot be issued against a co-sharer in possession, but the said rule is not absolute and admits to certain exceptions whether it is prejudicial or detrimental towards the other co-owners or not. It is imperative for the Courts below to protect the property during the pendency of the suit to prevent its dispossession. He has also cited judgments rendered in **Charan Singh Versus Kewal Krishan alias Kewal Singh & Ors.**, 2015 (5) Law Herald (P&H) 4423 and **Maharwal Khewaji Trust (Regd.), Faridkot Versus Baldev Dass**, 2005(1) Civil Court Cases 430 to contend that Court should not permit the nature of the property being changed which would include the alienation or transfer of

the property, much less loss or damage in case the party seeking interim injunction is able to make out a prima-facie case, much less balance of convenience and denial of the injunction would result into irreparable loss.

Mr.Sumeet Mahajan, learned Senior Counsel assisted by Mr.Amit Kohar, Advocate appearing on behalf of respondent No.1 submitted that no prejudice has been caused to the petitioners as while disposing of the application under Order 39 Rule 1 & 2 CPC, much less the appeal, the trial Court categorically observed that any construction raised or made during the course of the trial, shall be subject to the decision of the present case. Thus, the interest of the petitioner-plaintiffs, vis-a-vis the alleged irreparable loss has been taken care of. Even a rider has also been imposed as the injunction application has been dismissed in the absence of certain defendants, who have not yet appeared. The petitioner-plaintiffs have failed to prove their exclusive possession and, therefore, any injunction against a co-sharer in the absence of exclusive possession cannot be granted. The photographs shown during the course of the arguments would show that the plaintiffs have also installed their Petrol Pump at the distance of 150 meters and they do not want any other competitor to come in the way. It is in these circumstances, the suit has been filed, whereas private arrangement as revealed from the revenue record, parties continue with the same and, therefore, the Courts did not find the application to be conforming to the requirement of provisions of Order 39 Rule 1 & 2 CPC. The plaintiffs have sold their share and subsequent vendees have erected building thereon and it is only at this stage when the contesting respondent has been allotted Petrol Pump they have woken up from the slumber to challenge the sale deed, in essence they have acquiesced the sale deed

without raising any finger and grievance. There is no illegality and perversity in the orders under challenge. All the requirements of law have been taken into consideration. The suit had been filed with an ulterior motive to harass and pressurize defendant Nos. 1 and 43 as defendant No.1 and 2 are in exclusive possession of part of khasra No.342 min, entire area of khasra No.342 as shown in yellow colour in the plan and the boundary wall has been constructed. The letter of intent dated 28.11.2014 has been issued by defendant No.43 in favour of defendant No.1 for setting up a retail outlet and in pursuance thereof, NOC bearing No.754 dated 26.3.2015 has also been issued by the Deputy Commissioner, Ludhiana after getting clearance from as many as 13 Government departments. He further submits that relief of injunction is equitable relief. The person, who seeks equity, must do equity. The plan of the plaintiffs is not only incorrect but does not depict the correct position of rule. Almost all the co-sharers have raised construction on the land comprised in khasra No.342 min in the shape of complex, shops, residential buildings, passage, road etc., thus, the plaintiffs have no concern or connection with the land in exclusive possession of defendant Nos.1 and 2.

Before concluding his arguments, he further submits that his party would not be averse in case this Court contemplates to issue direction for expeditious disposal of the suit by observing that any construction of Petrol Pump would be at the peril and risk of defendant Nos.1 and 2. On the contrary, Mr.Jain submits that his client is also inclined to conclude the evidence as expeditiously as possible as the property at the hands of all co-sharers is joint. In case the petrol Pump is allowed to be installed and the plaintiffs being co-sharers are entitled to some share, then continuation of

the construction would create hindrance for the purpose of preliminary decree.

I have heard the learned counsel for the parties and appraised the paper book and of the view that since both the parties are at loggerheads vis-a-vis the possession much less allotment of the retail outlet by defendant No.43 in favour of defendant No.1, but the fact remains that the revenue record produced on record does not show defendant Nos.1 and 2 to be co-sharers. Even the alleged sale deed of 1976 has not been reflected in the revenue record what to talk of Tabdeel Malkiyatnama. While disposing of the injunction application, Court has to see following basic three ingredients:-

- a) Prima-facie case;
- b) balance of convenience; and
- c) irreparable loss.

If the other party is allowed to do the act, which cannot be compensated in terms of money and the case has to be decided on preponderance of the documentary evidence and not the actual and factual aspect at the spot. The revenue record, as noticed above, clinches the issue that all the three khasra numbers are in joint khata and in the absence of partition, other party cannot be permitted to transfer the share in excess and, thus, this Court is of the opinion that in case the trial Court is directed to expedite the trial as expeditiously as possible, preferably within a period of ten months by giving 4-4 effective opportunities to the parties, no harm would be caused in case defendant Nos.1 and 2 are restrained from raising the construction of Petrol Pump.

Accordingly, the impugned orders are set-aside and the revision petition is disposed of with a direction to the trial Court to grant 4-4

effective opportunities to the parties to the lis to lead evidence in accordance with law, much less by taking the assistance of the Court as well as under Order 16 Rule 1-A CPC and till then respondent Nos.1 and 2 are restrained from raising the construction of the retail outlet. The trial shall be concluded within a period of one year.

Any observations made in this Order shall not affect the merits of the controversy pending in the suit.

March 31st, 2016
ramesh

(AMIT RAWAL)
JUDGE