

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

CR No.3376 of 2016

Decided on: 12.05.2016

Inderjit Singh Sekhon

....Petitioner

Versus

Rajbir Singh

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Rajinder Goyal, Advocate
for the petitioner.

- 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?*

REKHA MITTAL, J.

The present petition has been directed against orders dated 03.12.2015 (Annexure P-11) passed by the trial Court and dated 12.04.2016 (Annexure P-16) passed by the Additional District Judge, Sangrur, whereby application filed by the respondent for grant of interim injunction under Order 39 Rules 1 and 2 of the Code of the Civil Procedure (in short 'CPC') was allowed by the trial Court and the appeal preferred by the petitioner against order of the trial Court has been dismissed by the Additional District Judge.

Counsel for the petitioner contends that the respondent/plaintiff has filed a suit for permanent injunction restraining the petitioner/defendant from interfering in possession of plaintiff or dispossessing him wrongly, forcibly and illegally from suit land measuring 39 bighas 07 biswas, detailed in headnote of the plaint on

the plea that he is in established cultivating possession of the suit land for the past about 40 years and is recorded as such in the revenue record. Paddy crop sown by the plaintiff is stated to be standing in the suit land. It has further been averred that possession of the plaintiff on the suit land was never objected to by Bachan Singh and his successors. Plaintiff used to pay land revenue in respect of the suit land and photocopies of receipts of payment of land revenue to Kartar Singh – Lambardar dated 04.06.1991, 21.01.1992, 26.06.1992, 17.02.1993, 25.01.1995 and 16.06.1995 are attached with the plaint.

The petitioner/defendant filed the written statement seriously contesting plaintiff's claim that he is in cultivating possession of the suit land with the plea that entries in revenue record are wrong. It has been averred that plaintiff was working as Pharmacist in Veterinary Department and during his service, he never remained posted at Sangrur. Village Mehraj is at a distance of 100 kms. from the suit land. The suit land is not attached to any passage from any direction. The Paddy crop requires a lot of water and it is watered at least for 26 times. Nothing has been mentioned in the suit as to through which source, the plaintiff used to irrigate the suit land. The suit land has no arrangement of canal water and adjacent canal channel is lying dry for the last 30 years. *Sardar* Birinder Singh, father of the defendant had six children and land of five children is joint known as '*Bagwali Kothi*'. The defendant is looking after the land/property in village Fatehgarh-Chhana and Bahadurpur owned by him and his brothers namely *Sardar* Birinder Singh living in USA, Dr. Harjit Singh and Harjapjit Singh living in U.K. and Gurdeep Kaur, his sister. It is further pleaded that the

entire land owned by children of *Sardar* Birinder Singh including the suit land is in cultivating possession of the respondent and the same is being cultivated from seven motors/tube-wells installed in their land and with the help of underground water pipes.

Counsel for the petitioner has contended that the Courts below have allowed interim injunction in favour of the respondent primarily on the basis of entries in the revenue records i.e. *Jamabandis* and *Khasra Girdawaris*. It is argued with vehemence that the suit land is surrounded by other land of family of the petitioner as depicted in the Field Map (Annexure P-5) sufficient to show that there is no independent access to the said land and the same falsifies and belies plea of the respondent qua his cultivating possession of the land in question. It is further argued that the respondent/plaintiff has not specified the source of irrigation of land measuring 39 bighas 07 biswas. The sale deed executed by father of the petitioner in regard to sale of land of Harjapjit Singh, minor at the time of sale, in favour of Sh. Bachan Singh is already under challenge in a separate suit pending in the Court. He has further submitted that despite a direction by the trial Court calling upon the respondent/plaintiff to harvest the crop standing in the suit property till 06.12.2015 and submit the report in this regard on 07.12.2015, the respondent neither harvested the crop nor submitted the report, sufficient to falsify his plea that he is in possession of the suit land. Further dilating, it is argued that the petitioner did not harvest the Paddy crop standing on the land as there was an injunction order passed by the Court and he had the apprehension that harvesting of Paddy crop by him may amount to

violation of that order.

I have heard counsel for the petitioner, perused the impugned orders and various documents placed on record.

Before dealing with the submissions made by counsel for the petitioner, it is appropriate to mention at the outset that scope of interference in an order passed by the trial Court while disposing of an application for grant of interim injunction and affirmed in appeal is limited only if the order(s) suffers from perversity or the Court has failed to take into consideration any materials which have substantial bearing on disposal of stay application on merits.

After recapitulating the settled position in law, it is pertinent to note that in the case at hand, admittedly, the revenue entries in the *Jamabandis* and *Khasra Girdawaris* for the past about 30 years are consistently in favour of the respondent/plaintiff. A presumption of correctness is attached to entries in the *Jamabandis* though the same is rebuttable one. The entries in the *Khasra Girdawaris* are recorded by the revenue officials in discharge of their official duties and these entries assume greater significance in the face of the same being corroborated by entries in the *Jamabandis*.

It is also an undisputed position of the case that sale deed qua suit land was executed by Sh. Birinder Singh father of the defendant in favour of Bachan Singh and the sale deed will hold good until set-aside by a competent Court of law. All these facts are sufficient to show that the petitioner or his brother is neither owner nor is recorded to be in possession of suit land for the past more than 30 years.

Counsel for the petitioner has sought to assail the orders passed by the Courts below primarily on two counts. The first

submission made by the petitioner is that there is no passage attached to the suit land for an independent access by the respondent/plaintiff. For this purpose, counsel for the petitioner sought to rely upon the Field Map (Annexure P-5). The question as to whether the land in question has an access for the respondent as well as correctness and authenticity of the Field Map (Annexure P-5) are the disputed questions of fact that can be decided only after permitting the parties to adduce evidence. Similarly, the issue as to whether the respondent has a source to irrigate the land in question is again a question of fact requiring adjudication on the basis of evidence to be adduced during course of trial. Both the submissions made by counsel for the petitioner are neither sufficient to rebut correctness of the entries in the revenue record nor to prove that the view taken by the Courts below suffers from any infirmity much less perversity.

Much stress has been laid by counsel for the petitioner *qua* failure of the respondent to harvest the Paddy crop and submit a report in pursuance to order dated 03.12.2015 whereby application for grant of injunction was disposed of.

Perusal of the record reveals that on 04.12.2015, the very next day, an application was filed by the respondent/plaintiff under Section 151 CPC with the allegations that in the evening of 03.12.2015, the plaintiff engaged labours to cut his Paddy crop standing in the suit land and on the following day i.e. 04.12.2015, when they went to the suit land, 6/7 unknown persons at the instance of the defendant came to the spot and threatened the plaintiff that in case he or any of his labour enter the suit land, he will be killed and they would not allow them to

cut the crop. The plaintiff prayed for providing police help to enable him to cut the Paddy crop and further prayed for appointment of a Local Commissioner to supervise cutting of crops in the suit land. The petitioner/defendant filed reply to the said application raising similar allegations as set-up in the written statement. It is also an admitted position of the case that neither after disposal of the stay application nor in response to the application filed by the respondent/plaintiff under Section 151 CPC, the petitioner ever made any request to the Court that let the standing crop be harvested under the supervision of a representative of the Court or by a Receiver pending decision of the suit and the sale proceeds may be disbursed to the party who is found entitled thereto on the basis of evidence to be adduced by the parties. Keeping in view conduct of the respondent/plaintiff in filing an application under Section 151 CPC on 04.12.2015, the petitioner cannot derive any advantage to his contention from inability of the respondent/plaintiff to harvest the crop standing in the suit property or submit a report in compliance with the order dated 03.12.2015. Taking a cumulative view of the facts and circumstances discussed hereinbefore, I find myself unable to accept the submissions made by counsel for the petitioner or to interfere in the orders impugned.

For the foregoing reasons, the petition fails and is accordingly dismissed *in limine*. However, nothing stated in this order shall be construed as an expression of opinion on merits of the case.

12.05.2016
yakub

(REKHA MITTAL)
JUDGE