

277

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

CR-3911-2015

Date of decision : 29.01.2016

Surjit Singh

...Petitioner

Versus

Dhanpati Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kulwant Singh Singh, Advocate
for the petitioner.

Mr. V.K. Jindal, Senior Advocate with
Mr. Akshay Jindal, Advocate with
Mr. Amardeep Sheoran, Advocate
for respondents No.1 to 9, 11 & 12.

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?

AMIT RAWAL, J. (ORAL)

The petitioner is in revision petition against the dismissal of the application filed under Order 39 Rule 1 & 2 of the Code of Civil Procedure (hereinafter called 'CPC'), in a suit for permanent injunction seeking restraint orders against the respondents-defendants particularly defendants No.9 and 12 on

the premise that by virtue of the revenue record and the sale deed, much less, the previous orders passed between the parties in respect of the litigation amongst the co-sharers, the exclusive possession has been found to be intact.

Mr. Ashish Aggarwal, learned Senior Counsel assisted by Mr. Kulwant Singh Singh, learned counsel appearing on behalf of the petitioner, submits that Fateh Singh @ Fattu was the owner of the land measuring 817 bighas 16 biswas having joint khewat No.1605 and on his demise the mutation of the aforementioned property was entered in the favour of the widow, sons and daughters. Shamsheer Singh S/o Fateh Singh @ Fattu was in exclusive possession of land measuring 2 bighas 8 biswas in khasra No.4119. This fact is reflected from the Jamabandi for the year 1979-80 (Annexure P1). Out of the aforementioned land, 13 biswas of the land was sold by him, thus, he remained in exclusive possession of the land measuring 1 bigha 15 biswas and raised the construction on the some part of the land and remaining area was vacant. Shamsheer Singh died in the year 1991. His wife Parwati Devi vide sale deed dated 16.08.2003 (Annexure P-3), sold the aforementioned land measuring 1 bigha 15 biswas to the petitioner-plaintiff. Other legal representatives of the Fateh Singh @ Fattu filed a civil suit seeking permanent injunction against the petitioner and Parwati Devi. The said suit was titled as **"Mallo Devi and others V/s Surjit Singh and another"**, in para 2, it was stated that defendant No.2 namely Parwati Devi wife of Fateh Singh @ Fattu was the owner in

possession to the extent of 13/120 shares in the land and she sold the same to defendant No.1 Surjit Singh, but delivered possession out of the Khasra No.4119 without any right and authority vide aforementioned sale deed. In the aforementioned suit, an application under Order 39 Rule 1 and 2 CPC was filed and the same came to be decided vide order dated 20.03.2006 (Annexure P-5) and the petitioner (defendant No.1 therein), was restrained from not raising the construction over the vacant plot, but was given liberty to use the constructed portion and make improvements thereon with a further restraint from alienating the land measuring 0 bigha 15 biswas out of khasra No.4119. The aforementioned pleadings in paragraph No.2 and the operative part of the order read thus:

"2. That defendant No.2 was the owner in possession to the extent of 13/120 shares in the land and she sold the same to defendant No.1 but delivered possession out of the Khasra No.4119 without any right and authority vide registered sale deed No.6464 dated 16.08.2005. The certified copy of the sale deed is attached.

7. In the present case the plaintiffs admit that defendant No.2 has delivered the possession of the land measuring 1B-15B out of the Khasra No.4119, though, she had only a share of 5 Biswas in the Khasra Number. It is settled proposition of law that the co-sharer can protect his possession till the partition of the joint holdings. As has been held in "Bhartu Vs. Ramsarup", 1981, PLJ, 204. Hence admittedly defendant No.1 arrived to be in conscious possession vide sale deed dated 16.08.2005 out of khasra No.4119 besides a residential house, there exists a vacant plot in Khasra No.4119 s is evident from the copy of Jamabadni for the year 1999-2000. The

plaintiffs admitted that the defendant No.1 has been out in possession of 1B-15B of land out of Khasra No.4119. At present defendant No.1 is in possession of 1B-15B of land area out of Khasra No.4119 being a co-sharer to the extent of 13/120 share i.e. 0B05B only in accordance with the right of his predecessor i.e. defendant No.2. As has been hold earlier the defendant No.1 is entitled to protect his possession till partition is effected by metes and bounds. But the copy of mutation No.25085 in favour of defendant No.1 shows that the defendant No.1 has been sold out only 5 Biswas of land pertaining to Khewat No.2079, Khasra No.4119. The defendants have specifically pleaded that the defendant No.2 was in exclusive possession of a residential house built over the Khasra No.4119 and the defendant No.1 has been put in possession of the same. But it is clear from the Jamabandi that Khasra No.4119 consists of gair mumkin makan and plot. A prima-facie case is made out in favour of the plaintiffs out of Khasra No.4119. The defendants have filed to produce any document in support of their contentions that they have been in exclusive possession over the whole of Khara No.4119. Though at present he can protect the possession over the land measuring 1B-15B but cannot be allowed to raise construction over the vacant plot. In this case, if he raises construction over the vacant plot the same shall complicate the partition proceedings to which his ultimate right in the suit land to the extent of 0B-5B stands subject to Reliance ca placed on Pritam Singh and others Vs. Chanan Singh and others 2003, Vol. (I), CCC, 426. The authority relied on by learned counsel for defendant while contending that the suit of the plaintiffs is not maintainable under Section 41(h) of Specific Relief Act, does not apply to the present set of facts, since, in the

case relied upon by the plaintiffs, the plaintiff had challenged the alienation of coparcenary property by the karta of the family whereas in the present case the injunction is sought against a defendant who is not coparcenar in the suit property. The defendants have failed to prove that they have been in exclusive possession over the whole of the Khasra No.4119. Hence, there is no bar to restrain defendant No.1 from selling more than his share. Reliance can be placed on Balbir Singh V/s Lambar Singh (supra).

9. In view of whole of my above discussion, the application in hand is allowed. The defendants are hereby restrained from raising any construction over the vacant plot and defendant No.1 further restrained from alienating land out of Khasra No.4119, to an extent of more than his share measuring 0B-5B in the suit land.

An application seeking clarification of the order was moved, which was clarified vide order dated 28.03.2006 (Annexure P-6), the operative part of the order reads thus:

"I have thoughtful consideration to the arguments advanced by learned counsel for the defendant/applicant. Apart from perusing the record. While disposing of the injunction application in the present suit, it was clearly ordered that the defendants are restrained from raising any construction over the vacant plot as existed over the Khasra No.4119. The interpretation of the order can be taken in no different terms. It clearly means that the defendant can raise any construction over any structure which already exist over Khasra No.4119. If any person violates the sense of order dated 20.03.2006, then

appropriate legal action can be initiated by adopting proper legal procedure. The application in hand is disposed off accordingly. To come up on 13.04.2006 the date already fixed for filing replication, if any, and for framing of issue”

He submits that as per the clarificatory order, the respondents-defendants were given the liberty to raise construction over the structure which already existed over Khasra No.4119. Liberty was granted to the parties to take/initiate legal action in case, the aforementioned order is violated. The aforementioned suit bearing No.76 of 2006 was dismissed in default on 01.11.2008. The aforementioned order was challenged by the affected parties, in this Court by filing CR No.2004 of 2006, but the same was dismissed vide order dated 06.04.2006 (Annexure P-7) . Hari Singh S/o Fateh Singh @ Fattu again filed a suit against the petitioner and as well as Parwati Devi wife of Shamsher Singh, where in paragraph No.1, it was stated that the suit land is joint undivided land of all the co-sharers and all the co-shares were/are in possession of their respective share. An injunction order dated 16.05.2006 (Annexure P-13) was passed, whereby, it was mentioned that the defendants admitted that they are not going to change the nature of the land nor shall sell the land more than their share. Accordingly, they were enjoined not to raise construction and as well as alienating the suit property out of Khasra No.4119 to the extent of his share measuring 0 bigha 5 biswas being 13/1203 share.

The aforementioned order was assailed by the affected party by filing review application and ultimately the matter reached to this Court in CR No.5145 of 2010 titled as "**Surjeet Singh V/s Dhanpati Devi and others**" and this Court on the basis of the agreed order passed on 12.01.2011, the following directions:-

"In view of the statement made by counsel for the parties, the revision is disposed of with the following modifications in the impugned orders:-

- 1. The petitioner shall be entitled to raise construction in the already constructed portion.*
- 2. The petitioner shall not raise construction on any other portion of the land in dispute.*
- 3. The construction so raised shall not entitle the petitioner to claim exclusive possession of the property in possession.*
- 4. These orders shall be subject to any order that may be passed in partition proceedings and shall not confer any right upon any party to claim exclusive ownership of any portion of the joint property."*

Thereafter the suit aforementioned was withdrawn on 17.10.2011. However, later on, Dhanpati Devi wife of Hari Singh and others, vide sale deed dated 11.12.2013 (Annexure P19), being the owner of the plot measuring 1 bigha 7 biswas comprised in Khasra No.4119 (2-8), Khewat No.2058, Khatoni No.3397, sold it to one Jatinder Nehra son of Lakhmi Chand Nehra.

He further submits that at the back of the other co-shares without any partition, khewat No.1605 was split into various khewat numbers. Since, Jatinder Nehra was interfering into the exclusive possession of the petitioner which necessitates the

petitioner to file a civil suit dated 20.01.2014 (Annexure P-20) along with an application under Order 39 Rules 1 and 2 CPC. During the pendency of the aforementioned suit, respondent No.12 Virender Lakhra son of Krishan Chand Lakhra submitted an application dated 27.11.2014 (Annexure P-18) to the Deputy Commissioner for seeking the possession of the aforementioned land, alleged to have been purchased from Jatinder Nehra. All these documents are part and parcel of the record of the Courts below, however, both the Courts below did not grant the interim injunction though the case of the petitioner squarely falls within the directions contained in the judgment of the Full Bench of this Court **"Bhartu V/s Ram Sarup, 1981 PLJ 204 (P&H)** and Division Bench of this Court in **"Bachan Singh V/s Swaran Singh" 2000(3) RCR (Civil) 70**, wherein, it has been observed that a co-owner, who is found to be in exclusive possession of the joint khata/land, can seek the injunction against the other co-sharers. No steps have been taken to seek the partition of the property. This Court while issuing the notice of motion granted status quo, but under the garb, the respondents-defendants No.9 and 12 are interfering with the peaceful possession of the petitioner. He submits that his client shall abide by the directions contained in the order dated 12.01.2011, in essence, will not raise construction and claim exclusive possession after the partition, but till the partition proceedings are not initiated, much less, during the pendency of the suit, the respondents-defendants aforementioned, through their agents, attorneys etc. be restrained from interfering

the peaceful possession of the land measuring 1 bigha 15 biswas out of Khasra bearing No.4119, Khewat No.1605.

He further submits that the splitting of the khewat No.1605 into various other khewat at the instance of the other co-sharers that too at the back of the petitioner, the Courts below have erroneously been made to believe and given an opinion that the petitioner-plaintiff has not been found to be in exclusive possession. The said findings are contrary to the record, which have been demonstrated, during the course of the arguments, by referring to the revenue record. He further submits that change in the revenue record from exclusive possession of Shamsheer Singh to the joint with the co-sharers in khasra No.4119, is without any basis or foundation. In support of his contentions, he has referred to the judgment rendered by this Court in **"Gurdip Singh V/s Manmohan Singh and others" 2000 (4) RCR (Civil) 19**, to contend that when there is conflict between old and new jamabandis, the presumption of law is that more importance should be given to the previous jamabandi until and unless, it is shown that new jamabandi has been entered on the basis of some valid documents. All these aforementioned aspects have not been noticed by the Courts below and thus, there is illegality and perversity in the order. He further submits that his client undertakes to conclude the trial as expeditiously as possible subject to the terms and conditions which this Court deems appropriate.

On the other hand, Mr. V.K. Jindal, learned Senior Counsel assisted by Mr. Amardeep Sheoran and Mr. Akshay Jindal, learned counsel appearing on behalf of respondents No.1 to 9, 11 & 12, submits that both the Courts below have concurrently held that the petitioner-plaintiff has not been able to prove the exclusive possession by relying upon the Jamabandi and showing the joint khata/land and, rightly so, the injunction application has been declined for the reason that the suit for permanent injunction against a co-sharer in the absence of exclusive possession, is not maintainable. He has also drawn the attention of this Court to the pleadings of the petitioner, whereby, it has been unequivocally stated that out of the aforementioned land measuring 1 bigha 15 biswas land measuring 100 squares yards has been sold by constructing shops thereon. Thus, the petitioner-plaintiff has deviated from the directions contained in the order dated 12.01.2011, therefore, the act of petitioner-plaintiff has not been equitable. He has also drawn the attention of this Court to the order dated 20.03.2006, to contend that the plaintiff had been enjoined not to alienate the land measuring 0 bigha 5 biswas and not to raise construction on the vacant land, since, it is a joint khata, until and unless, the property is not partitioned, the injunction cannot be granted, and thus, prays for dismissal of the revision petition. He further submits that a bifurcation of the khewat No.1605, is in accordance with law and cannot be raised in a suit for permanent injunction, as there is no challenge to the same.

Earlier, it has come on record that the disputed area was a part of construction area, but the position is totally converse/contrary to what has been stated in the previous litigation, in essence, the petitioner-plaintiff has deviated from undertaking as given before this Court.

I have heard the learned counsel for the parties and appraised the paper book and record, much less case law and am of the view that the revision petition deserves to be allowed for the following reasons:

The jamabandi for the year 1979-80 (Annexure P-1) shows the Khewat No.1605 of khasra No.4119, measuring 817 bigha 16 biswas and Shamsheer Singh, co-sharer, has been shown to be in exclusive possession of the 2 bigha 8 biswas. In essence, Shamsheer Singh, predecessor-in-interest of the petitioner, was in exclusive possession of the same, which fact is fortified from the perusal of copy of the Extract of Assessment Register issued by the Municipal Committee Karnal (Annexure P-2), wherein, it has been noticed that Shamsheer Singh in the construction so raised, has 7 rooms, two kitchens and one cow shed and subjected to the house tax. The exclusive possession of the petitioner-plaintiff is further proved from the contents of the sale deed dated 16.08.2005 (Annexure P-3) whereby, it has been mentioned in the following manner:

"By execution of the sale deed, the possession of the khasra No.4119 has been given to the vendee. The total

sale consideration of ₹ 14,60,000/- would be charged before the Registrar at the time of the execution of the Sale Deed”.

The previous orders mentioned above i.e. 20.03.2006 and 28.03.2006 also reveal the exclusive possession of the plaintiff, and it is in these circumstances, the petitioner-plaintiff was injuncted not to raise construction on the vacant plot, but was permitted to make the improvement and raise construction on the constructed area.

The aforementioned facts derives an irresistible conclusion that Shamsheer Singh, the previous owner/Predecessor-in-interest, was found to be in exclusive possession, and therefore, the plea of Mr. V.K. Jindal, that the suit for permanent injunction against the co-sharer in the absence of the exclusive possession, is not maintainable, is hereby rejected. The order passed by this Court in CR No.5145 of 2010 also shows the exclusive possession of the petitioner-plaintiff, however, it was subject to the partition proceedings, which has so far not been initiated at the behest of any of the co-sharers. The change of khewat number, alleged to have been done at the back of the petitioner-plaintiff, is not the subject matter of consideration, in this Court, however, the petitioner-plaintiff shall be at liberty to seek the vindication of the grievance in a competent Court of law or in a pending suit, by leading direct and cogent evidence, if any.

There is another aspect of the matter that respondent

No.12 Virender Lakhra himself moved an application (Annexure P-18) to the Deputy Commissioner, Karnal, to provide the possession which shows that even he had not been handed over the possession, by erstwhile owner namely Jatinder Nehra. The contents of the letter read thus:

"To

*The Deputy Commissioner
Karnal.*

Subject: Application for delivering possession of land to applicant.

Sir,

It is submitted that I, Virender Lakda son of Sh. Krishan Chander Lakda, is resident of VPO Jahri, Tehsil and District Sonapat. Whereas land bearing Khewat No. 2058, Khatauni No. 3397, Khasra No. 41119 (2-8), measuring 1 Bigha 7 Biswas, situated in Sham Nagar, District Karnal, as per Jamabandi for the year 2004-05, is owned and possessed by me. The said land was Lakhmi Chand Nehra, resident of Village Hasanpur, Tehsil Gharaunda, District Karnal. Now, one Surjit son of Maman Singh, resident of House No. 953, Sham Nagar, Karnal is trying to take illegal possession over my above noted land with malafide intention. Whenever I use to go to my said land, he starts hurling abuses to you and threats to kill me and asks me not to come there again. He, being permanent resident of said locality, is claiming his right. I am apprehending loss of life and property at the hands of said Surjit. Title Deeds of said land are enclosed herewith.

Hence, you are humbly requested to get delivered me possession of above noted land without

having any clash or causing loss to life and property, so that no mishappening may take place in future. I will be thankful to you.

Thanking you,

Sd/-

Virender/Virender Lakda

Dated:27.11.2014

Son of Sh. Krishan

Chander Lakda,

*R/O VPO Jahri, Tehsil &b
District Sonapat*

Mobile No. 9991309027

P.S. City, Karnal

District Karnal

Subject: Regarding delivering possession of land.

Sir,

With regard to your office letter No. 1734/Steno dated 2.12.2014, it is submitted that as is mentioned by you in the letter, Virender Lakda, complainant, son of Sh. Krishan Chand Lakda, resident of village Jahri, Tehsil and District Sonapat is owner of land measuring 1 bigha 7 biswa as per revenue record, on which, Surjit Singh son of Maman Singh, resident of House No. 953, Sham Nagar, Karnal is claiming his ownership and Surjit Singh is in possession of the same. In this connection, if the applicant is required to be given possession of above land then some revenue office may be deputed for delivering possession, so that Police assistance may be given as per rules.

Report is submitted before you

Sd/-

Police Post Section 4, Karnal

*Karnal.
23.12.2014*

*Police Station City,
Dated*

*Forwarded Please.
Sd/-
Insp/SHO
Police Station City, Karnal.
24/12/14"*

All these factors lead me to form an opinion that there has been compliance of the essential ingredients of the Order 39 Rules 1 and 2 CPC, in essence, the petitioner-plaintiff has a prima facie case, much less, balance of the convenience lies in his favour and in case, the respondents-defendants are not enjoined in the alleged interference of the exclusive possession, he would suffer irreparable loss. Since, the petitioner-plaintiff has undertaken to conclude the evidence as expeditiously as possible, I deem it appropriate to issue directions to the trial Court to conclude the trial as expeditiously as possible by giving four effective opportunities to both the parties to the *lis* and thereafter, decide the suit, in accordance with law.

In view of what has been observed above, the impugned orders dated 19.05.2015 and 30.05.2015 are hereby set aside and the application filed under Order 39 Rules 1 and 2 CPC is allowed. The respondents-defendants along with their Agents, attorneys, servants etc., in the Civil Suit bearing No.32 of 2014, titled as "Surjit Singh V/s Dhanpati Devi and others" are hereby enjoined and are restrained from interfering in the exclusive possession of

the land measuring 1 bigha 15 biswas out of Khasra bearing No.4119, Khewat No.1605.

It is made clear that the petitioner-plaintiff shall not alienate the land, during the pendency of the suit.

Anything observed herein shall not affect the merits and demerits of suit in respect of the pending adjudication.

Accordingly, the revision petition is allowed.

29.01.2016
yogesh

(AMIT RAWAL)
JUDGE