IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.4456 of 2016 (O&M)
Date of Decision: 05.10.2016

Guravtar Singh

.....Petitioner

Vs

Surjit Singh

.....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. J.S. Moudgill, Advocate
for the petitioner.

Mr. Parveen K. Kataria, Advocate
for the respondent.

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RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 16.04.2016 (Annexure P-2) passed by District Judge, Moga whereby order dated 19.11.2015 passed by the trial Court was set aside and application under Order 39 Rules 1 and 2 CPC was dismissed.

[2]. Brief facts of the case are that the plaintiff/petitioner filed a suit for permanent injunction seeking to restrain the respondent from interfering in his possession, except in due course of law. Along with suit, an application under Order 39 Rules 1 and 2 CPC was also filed. Plaintiff/petitioner alleged that he was recorded as owner of the suit land. Initially, father of

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the parties namely Lachman Singh was owner of the suit land, but he transferred his entire share in the suit land in the name of plaintiff/petitioner as respondent had fallen into bad company and was addicted to many vices. Mutation was sanctioned in favour of the petitioner and he was in actual cultivating possession of the suit land.

[3]. Defendant/respondent contested the claim of the plaintiff/petitioner on the ground that earlier, he had filed a suit for joint possession of the suit land which was pending before the trial Court, whereby the plaintiff/petitioner did not appear despite service through the process of *munadi*. Plaintiff/petitioner fraudulently got the property transferred from his father on 20.05.2015 during pendency of the aforesaid suit and the transfer in question was hit by doctrine of *lis pendens*. Plaintiff had concealed the factum of pending litigation in the present suit and the suit was claimed to be baseless.

[4]. Trial Court granted *ad interim* injunction in favour of the plaintiff/petitioner whereby the defendant was restrained from interfering in the possession of the plaintiff, except in due course of law.

[5]. Lower Appellate Court reversed the order of the trial Court dated 19.11.2015 on the premise that the plaintiff was not

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found to be in exclusive possession of any specific portion of the land, therefore, the defendant being co-sharer cannot be restrained from asserting his right of being in joint possession.

[6]. I have heard learned counsel for the parties.

[7]. Evidently, a suit for joint possession at the instance of defendant was already pending between the parties before the Civil Judge, Moga. Plaintiff/petitioner has not appeared in the said suit despite service effected through the process of *munadi*. Father of the parties was owner of defined share and he transferred his entire share in the name of the petitioner except *Khasra* Nos.50//19/3, 23/1. Mutation of aforesaid transaction was sanctioned in favour of the plaintiff. Plaintiff asserted his possession on the basis of aforesaid transfer to the exclusion of the defendant.

[8]. At this stage, It cannot be appreciated as to whether the property/land was self acquired or ancestral property in the hand of father of the parties Lachman Singh. The alleged status of defendant being co-sharer and in joint possession is also *sub judiced* in a pending suit before the Civil Judge, Moga. The pleaded case of the plaintiff is that the father of the parties was owner to the extent of 11/31 share and he transferred his entire share in the name of plaintiff, therefore, it was a case of total

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replacement of Lachman Singh with the plaintiff. For want of pleading, factum of co-sharership cannot be appreciated at this stage, because *lis* is between plaintiff and defendant alone.

[9]. At this stage, only a *prima facie* case is to be seen, which according to sanctioning of mutation of the entire share in favour of plaintiff is made out. Plaintiff is proved to be in possession. The status of defendant on the basis of joint possession is yet to be determined by the Court. It is settled principle of law that a co-sharer (though the subject matter is still *sub judiced* out of possession can ask for partition of the land.

[10]. At this stage, all the three ingredients viz. existence of prima facie case, balance of convenience and irreparable loss in the event of not granting *ad interim* injunction are in favour of the plaintiff. On determination of status of defendant in the pending suit or otherwise, the defendant would be entitled to seek necessary relief in accordance with law. The scope of the suit for permanent injunction is only to the effect that plaintiff can only be dispossessed in due course of law.

[11]. It is true that in case of co-sharership, one of the co-sharer cannot injunct the other co-sharer unless and until he is proved to be in exclusive possession of the property, to the

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very ouster of the other co-sharer. The filing of suit for joint possession *prima facie* shows that the defendant has not been shown as co-sharer otherwise, he would have filed suit for partition.

[12]. It is true that possession of the co-sharers on behalf of one of the co-sharer would be deemed to be on behalf of all the co-shaers, but at the same time it is also true that a co-sharer, who is out of possession can only ask for partition.

[13]. Learned counsel for the respondent submitted that the plaintiff is not proved to be in possession as the possession was already taken by the competent authority in terms of proceedings under Section 145 Cr.P.C. after attachment of the land in question. Father of the parties is still alive. The filing of the present petition is a result of concealment of material facts and, therefore, plaintiff is not entitled to any discretionary relief.

[14]. I have deliberated upon the issue. Proceedings in terms of Section 145 Cr.P.C., would be decided by the competent Court in accordance with law. The civil suit for joint possession filed by the defendant would also be decided by the trial Court in accordance with law. At this stage, even if, the property has been attached and Receiver has been appointed, who has taken over the possession, it would be decided in those

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proceedings as to the party from whom the possession was taken by the Receiver.

[15]. It would be just and appropriate to order *status quo* regarding possession. However, the proceedings under Section 145 Cr.P.C., would remain uninfluenced by any observation made by the Court.

[16]. In view of aforesaid, this revision petition is partially accepted.

October 05, 2016 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No

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