

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

**CR No.5232 of 2016 (O&M)
Decided on: 18.10.2016**

Ram Pyari

....Petitioner

Versus

Naraini Devi and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. P.K. Ganga, Advocate
for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against orders dated 30.05.2016 (Annexure P3) passed by the Civil Judge (Jr. Division) Sirsa and dated 03.08.2016 (Annexure P5) passed by the Additional District Judge, Sirsa whereby application for interim injunction filed by the respondents/plaintiffs was allowed by the trial Court and the order passed by the trial Court was affirmed in appeal.

A brief backdrop of the case is that Naraini Devi and Charan Dass (respondents No.1 and 2) filed a suit for declaration that portion 'A' is a *Rasta Saream* for use by plaintiffs, defendants No.1 to 4 and proforma defendants for use of land comprised in Khewat No.93 and the defendants be restrained from causing any hindrance in using portion 'A' as path for approaching the public way attached to Khewat No.93 by the plaintiffs as well as proforma defendants. It has been pleaded that parties to the suit are recorded as co-sharers in possession in Khewat No.93 comprising land measuring 79 kanals 12 marlas. Khewat No.93 corresponds to Khewat No.52 in *jamabandi* for the year 1983-84 of village Dhaban. In the *jamabandi* for the year 1983-84,

defendants No.3, 4 and Jai Dayal father of proforma defendants were recorded as owner in possession in equal share in Khewat No.52. An oral partition took place between the aforesaid persons and they are in possession of their respective areas as per their share. Brij Lal – defendant No.3 sold land measuring 15 kanals comprised in Rectangle No.68 Killa Nos.6(2-2), 7/1(4-16) Sq. No.69 Killa No.1(6-4) 2(1-18) to plaintiff No.1 vide registered sale deed No.856 dated 20.05.1986. In order to have an access to the public way left at the time of consolidation, defendant No.3 gave 2 karam wide passage from the Western side of Killa Nos.20, 21 comprised in Khewat No.52 for use of plaintiffs and proforma defendants. After the said sale, plaintiffs and proforma defendants are using the passage in question and defendants have no right to cause any interference in use of the said passage. Along with the suit, an application was filed for grant of interim injunction restraining the contesting defendants from causing any interference in use of portion A as path by the plaintiffs to approach the public way left by the revenue department.

Defendants No.1 and 2 (including petitioner/defendant No.1) filed their joint written statement and in turn contested claim of the plaintiffs with the plea that defendant No.1 is a co-sharer in the suit land and partition proceedings are pending in the Court of Assistant Collector Ist Grade, Sirsa. It is averred that plaintiffs have no right to seek any *Rasta* in Rectangle No.52 Killa No.20/2. The defendants have no intention to occupy the alleged passage as they have nothing to do with the same in any manner.

The trial Court after noticing the principles in law necessary to be satisfied for grant of interim injunction in favour of an applicant, culled out in the judgments passed by Hon'ble the Supreme Court of India and on a detailed consideration of the materials on record in the light of rival submissions made by counsel for the parties recorded that the plaintiffs satisfied the essential ingredients of *prima facie* case, balance of convenience in their favour and non-grant of injunction resulting in irreparable loss or injury and allowed the application for interim injunction restraining the defendants from causing interference or hindrance in use of disputed portion by the plaintiffs till the main suit is decided on merits. As has been noticed hereinabove, appeal preferred by the petitioner against the order dated 30.05.2016 passed by the trial Court did not find favour with the Additional District Judge, Sirsa and as a consequence, findings recorded by the trial Court were affirmed.

Counsel for the petitioner has submitted that the Courts below have wrongly placed reliance upon averments in the written statement, report of the local commissioner and statement of Ram Pyari – petitioner recorded in some other proceedings in order to uphold plea of the plaintiffs that there exists a 2 karam wide passage towards Western side of Killa Nos.20, 21 purported to be left by Sh. Brij Lal through sale deed dated 20.05.1986. It is further submitted that neither in the written statement filed by the defendants (Annexure P7) nor in her statement (Annexure P8), Ram Pyari has admitted existence of any such passage much less its user by the plaintiffs. Another submission made by counsel is that proceedings for partition of joint land have

already been initiated and the same are pending before the revenue authorities.

I have heard counsel for the petitioner, perused the paperbook but find that the petition is devoid of merit and deserves to be rejected.

Before adverting to the submissions made by counsel for the petitioner, it is pertinent to recapitulate the settled legal position that interference in an order passed by the trial Court granting injunction is warranted if the same suffers from perversity or the trial Court has failed to take into consideration any evidence which has a material bearing on disposal of the application for stay. In the case at hand, both the Courts below have consistently held in favour of the respondents/plaintiffs with regard to existence of 2 karam wide passage on the Western side of Killa Nos.20 and 21 stated to be left by Sh. Brij Lal by way of sale deed in respect of land measuring 15 kanal executed as back as in the year 1986.

The defendants in the written statement in para 4 has averred that the plaintiffs under the garb of an order of injunction intends to illegally possess the existing path adjacent to the land and existing in Rectangle No.52 and Killa No.20/3 which is in existence towards the Western side of Killa No.20 of Rectangle No.52 as detailed in registered sale deed bearing No.856 dated 20.05.1986. The report of the local commissioner relied upon by the Courts below in favour of the respondents/plaintiffs has neither been produced before this Court much less to find any fault therein. The Courts below have taken note

of statement of Ram Pyari recorded in proceedings before the revenue courts only to the extent that she has stated therein that she has no connection with Sq. No.52 Killa No.20/3 measuring 0-8 though voluntarily stated that Joginder has told that and there is a *pucca khal* (water course) in that 08 marlas.

Counsel for the petitioner has failed to point out that the Courts below have taken into consideration any materials that is not a part of record much less failed to ignore any materials favourable to the petitioner or to controvert plea of *prima facie* case put forth by the respondents/plaintiffs. In this view of the matter, I do not find any error much less perversity in the impugned orders warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed *in limine*.

18.10.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No