

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

Civil Revision No.5451 of 2016

Date of decision : 07.11.2016

Subash Singh

.....Petitioner

Versus

Karnail Singh

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Satbir Rathore, Advocate for petitioner.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 06.11.2015 passed by the learned Civil Judge (Junior Division), Mukerian, vide which the application moved by the petitioner-plaintiff under Order 39 Rules 1 & 2 of the Code of Civil Procedure, 1908 (for short the “CPC”) has been dismissed and the order dated 17.05.2016 passed by the learned Additional District Judge, Hoshiarpur vide which the appeal filed by the petitioner-plaintiff against the aforesaid order has also been dismissed.

2. The petitioner-plaintiff filed the suit for permanent injunction restraining the respondent-defendant from blocking the passage over land measuring 18 Marla comprised in Khewat No.170/154, Khatoni No.193, Khasra No.45/3 (0-18) being part of Khewat No.183, Khatoni

No.239, Khasra No.45 (13-14) situated in village Salehrian Kalan, H.B. No.313 Tehsil Mukerian, Distt. Hoshiarpur. As per the case of the petitioner-plaintiff the land comprised in Khasra No.45 measuring 13 Kanal 14 Marla was reserved as common passage for the people of the village during consolidation proceedings. Since then the plaintiff being permanent resident along with other people of the village has been using the said property as common passage. The respondent-defendant has no exclusive right or title in the suit property but he in connivance with the revenue and consolidation authorities illegally and fraudulently got the suit property entered in his name without following the legal procedure. The revenue entries showing the ownership and possession of the respondent-defendant and his brother qua Khasra No.45/3 are illegal, null & void and are liable to be corrected. The respondent-defendant being Lambardar as well as Sarpanch of the village colluded with the consolidation authorities and got the alleged order dated 31.08.1992 from the Additional Consolidation Director and later on an order dated 30.10.1994 from AC IInd Grade, Mukerian, which are null and void. Otherwise also, the aforesaid order was never executed and no physical possession was even exchanged. It is further pleaded that now on the basis of the wrong revenue entries, the defendant is threatening to block the passage comprised on Khasra No.45/3 which is part of original Khasra No.45 (13-14) by raising the construction. Hence, the suit.

3. Along with the suit, the petitioner-plaintiff also filed an application for ad interim injunction on the same lines.

4. The respondent-defendant contested the suit as well as the stay application on the grounds *inter alia* that the land comprised in Khasra No.45/3 (0-18) is owned and possessed by him and his brother. This land was allotted to them during consolidation by the consolidation authorities vide order dated 07.10.1994. The mutation was also sanctioned on 30.10.1994. It is further pleaded that the land measuring 15 Marla belonging to the respondent-defendant and his brother was taken away and 18 Marla was given to them at the time of consolidation. Since then the defendant is in possession thereof as owner and the new passage was carved out which is evident from mutation No.1472 sanctioned in the year 1994. It is further pleaded that the passage is there which was carved out by the consolidation department in place of this portion of Khasra No.45. The defendant being owner in possession of the suit land has every right to use the same and he has constructed the house thereupon. With these pleas the respondent-defendant prayed for dismissal of the suit as well as stay application.

5. On appreciating the arguments raised by learned counsel for the parties and material available on record, the learned trial Court dismissed the application vide impugned order dated 06.11.2015. Aggrieved with the aforesaid order the petitioner-plaintiff filed the appeal which was also dismissed. Hence, this revision petition.

6. Learned counsel for the petitioner-plaintiff contended that the suit property comprised in Khasra No.45/3 is the part of Khara No.45 (13-14) which is a passage. He contended that the revenue entries showing the respondent-defendant and his brother as owner in possession of the land

comprised in Khasra No.45/3 (0-18) are illegal, null and void. He contended that this land was reserved as a common passage during consolidation. Since then the petitioner-plaintiff along with other people have been using the same as a common passage. The orders passed by the consolidation authorities/revenue authorities are null & void and have been obtained by respondent-defendant being the Sarpanch of the village in collusion with the consolidation/revenue officials. Thus, he contended that the respondent-defendant has no right to obstruct or encroach upon the common/public passage and the application moved by the petitioner-plaintiff for ad interim injunction has been wrongly dismissed.

7. I have duly considered the aforesaid contentions.

8. This fact is not disputed that in the latest revenue record respondent-defendant and his brother are recorded as owner in possession of the suit property comprised in Khasra No.45/3 (0-18). This land is nowhere reflected as a passage in the revenue record. The respondent-defendant has also placed on file the copy of the order passed by the Additional Consolidation Director and Consolidation Officer, Hoshiarpur to show the transfer of this land in favour of respondent-defendant and his brother. As per the case of the respondent-defendant, their land measuring 0 Kanal 15 Marla was taken over during consolidation proceedings and they were given the disputed land measuring 0 Kanal 18 Marla to carve out the new passage. So, the petitioner-plaintiff has not been *prima facie* able to establish that the land in dispute is a passage. The correctness or legality of the revenue entries and competency of the consolidation authorities to order the transfer

of the land is a matter to be decided at the appropriate stage on appreciation of the evidence by the learned trial Court.

9. The balance of convenience is also not in favour of the petitioner-plaintiff and he is also not going to suffer the irreparable loss as the new passage has come in existence.

10. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the impugned orders passed by the learned courts below. Therefore, the present revision petition is without any merit and the same is hereby dismissed.

07.11.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No