

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

Civil Revision No.6472 of 2016

Date of Decision: 05.10.2016

Satnam Singh

.....Petitioner

Vs

Gursher Singh and others

.....Respondents

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

Present: Mr. Lokesh Sinhal, Advocate and
Mr. Jagjot Singh Lalli, Advocate
for the petitioner.

Mr. Shailendra Jain, Sr. Advocate with
Mr. Gursimran Singh, Advocate
for the respondent/caveators.

RAJ MOHAN SINGH, J.

[1]. Plaintiff/petitioner being aggrieved by order dated 20.09.2016 passed by Additional District Judge, Jalandhar whereby order dated 11.03.2015 passed by the Civil Judge (Sr. Divn.) Jalandhar was set aside and order of status quo was vacated, has filed this revision petition.

[2]. Brief facts as gathered from the record are that plaintiff/petitioner filed a suit for declaration to the effect that he was the exclusive owner in possession of suit land. Permanent injunction was also sought to restrain the defendants from

interfering in the possession and construction of the plaintiff. Along with plaint, an application for *ad interim* injunction under Order 39 Rules 1 and 2 read with Section 151 CPC was filed and the same was decided by the trial Court vide order dated 11.03.2015 whereby *status quo* was ordered to be maintained regarding possession of the suit property, on the premise that the defendants were to prove their exclusive possession, so as to counter the assertion of the plaintiff, who had the recital of sale deed in his favour. Lower Appellate Court reversed the order dated 11.03.2015 vide order dated 20.09.2016.

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

[4]. Learned counsel for the petitioner submitted that the plaintiff has sought declaration of ownership on the basis of his exclusive possession on the strength of sale deed dated 11.03.2014 vide which the plaintiff had purchased suit land from Jaswinder Kaur wife of Faqir Singh as general power of attorney of Faqir Singh. Mutation was sanctioned on the basis of aforesaid sale deed in favour of the plaintiff. Plaintiff claimed himself to be in possession of the suit property since the time of its purchase. Plaintiff asserted that some time back when he tried to raise construction, he came to know that defendant Nos.1 to 4 along with some anti-social elements were trying to

take forcible possession of the suit property by alleging that defendant Nos.1 and 2 were the owners of the plot. Defendants could not succeed in their evil design. Defendant No.5 was in possession of the adjacent plot. At the time of execution of sale deed, said plot was demarcated by the general power of attorney of the original owner in the presence of defendant No.5. Possession was delivered by the attorney to the plaintiff. Defendant Nos.1 and 2 started proclaiming title of the suit land and also approached the local police. With this background the suit came to be filed.

[5]. The suit was contested by the defendant Nos.1 and 2 and they claimed title of the property having purchased 18 *Marlas* of land vide sale deed dated 01.02.2013. The attorney in favour of Jaswinder Kaur was claimed to be vague. No specific share of Faqir Singh was mentioned therein. Suit was contested on all counts. Defendant Nos.1 and 2 claimed themselves to be *bona fide* purchasers for a valuable consideration of the land and were in possession. Defendant No.2 being owner of 12 *Marlas* of land applied retail outlet of Hindustan Petroleum Corporation Limited for the installation of petrol pump and got the procedural work completed including preparation of layout plan, site plan and approval from the District Controller, Food Civil Supplies and Consumer Affairs. Defendant No.2 also got

No Objection Certificate from different Departments of the Government on the basis of his clear title. Defendant No.5 also contested the suit.

[6]. Learned counsel for the petitioner submitted that the plaintiff being in possession of the land on the strength of sale deed was entitled to *ad interim* injunction till final decision of the suit. Learned counsel relied upon **T. Lakshmipathi and others vs. P. Nithyananda Reddy and others, (2003) 5 SCC** to contend that one of the co-sharer cannot take exclusive possession of the property, nor commit an act of waste, ouster or legitimate use of the land as by doing so, he would render the whole of the property unfit for the use of other co-owners and great prejudice would be caused to the co-sharers as the act of one of the co-sharer would amount to ouster of others without there being any exclusive possession of other co-owners.

[7]. Learned counsel for the petitioner also submitted that co-owner cannot raise construction before getting the land partitioned as it would affect the rights of other co-owners. Defendants cannot be permitted to raise construction over a specified portion of joint land so as to deprive other co-sharers from the use of joint land. By doing such act, defendants would violate the concept of co-sharership. In the aforesaid context,

learned counsel referred to **Rishal Singh and ors. vs. Shri Bhagwan & Anr., 2007(5) RCR (Civil) 393.**

[8]. Learned counsel for the petitioner emphasized that at the stage of grant of temporary injunction only three principles are to be appreciated i.e. existence of prima facie case, balance of convenience and irreparable loss likely to be caused in the event of non-grant of *ad interim* injunction in favour of the plaintiff. By relying upon **Maharwal Khewaji Trust (Regd.) Faridkot vs. Baldev Dass, (2004) 8 Supreme Court Cases 488**, learned counsel ultimately submitted that order of *status quo* was just and proper in the facts and circumstances of the case.

[9]. On the other hand, learned Senior counsel for the respondents denied the assertion made by the petitioner and pleaded that defendants being in possession want to utilise the land for the purposes of installation of petrol pump for which necessary compliance from different departments of the Government has been made. Learned Senior counsel pointed out that the general power of attorney of the plaintiff, herself was not sure with regard to placement of her land as she moved an application before the Revenue Authorities for demarcation of the land in question soon before the execution of the sale deed in favour of the plaintiff/petitioner. Defendant Nos.1 and 2

claimed their exclusive possession over the suit property on the basis of sale deed dated 01.02.2013.

[10]. Learned Senior counsel for the respondents further submitted that Charan Dass son of Sh. Budh Singh and Dhani Ram were the original owners of the suit land. They entered into agreement to sell in favour of Tarsem Singh and Gurmit Kaur. A suit for specific performance was filed by Tarsem Singh against the legal representatives of Charan Dass. A compromise was effected between the parties in the aforesaid suit. Legal representatives remained owner of property whereas possession was given to Satpal Singh Toor i.e. legal representative of Charan Dass on 01.06.2012. Charan Dass had four sons namely Bhajan Singh, Faqir Singh, Sohan Singh and Sant Gurmit Singh. Dhani Ram had two sons namely Bakshish Singh and Gurmeet Singh. Bhajan Singh executed attorney in favour of Satpal Singh Toor and Parshottam Lal on 10.05.2012. Parshottam Lal executed a sale deed on 01.02.2013 in favour of Gurmukh Singh-defendant No.2. Mutation was also sanctioned pursuant to aforesaid sale deed. Defendant No.1 is son of Gurmukh Singh. Bakshish Singh and Gurmeet Singh executed attorney in favour of defendant No.2 on 15.01.2013. Faqir Singh and his wife were Non-Resident Indians (NRIs). Faqir Singh executed power of attorney in favour

of his wife Jaswinder Kaur on 29.05.2012. The power of attorney would show that the same was not in respect of any defined boundaries. Jaswinder Kaur filed an application to Commissioner on 20.02.2014 wherein no specific portion of land was claimed and possession of the defendants was admitted. Thereafter she executed a sale deed on 11.02.2014 giving specific dimensions of the suit land in favour of the plaintiff.

[11]. Learned Senior counsel for the respondents vehemently referred to the *power of attorney* executed by Faqir Singh in favour of his wife Jaswinder Kaur. Perusal of the attorney would reveal that Faqir Singh had authorised Jaswinder Kaur to sell his share in the land comprised in *Hadbast* No.302, *Khewat* No.296, *Khatauni* Nos.437, 438, 439, 440, 441 and 442 as per *jamabandi* for the year 1999-2000 situated in the revenue estate of village Mithapur, Tehsil and District Jalandhar. Perusal of the sale deeds executed in favour of Gurmukh Singh and Gursher Singh i.e. defendant No.2 and 1 dated 01.02.2013 would reveal that property comprised in Khata No.296/437 to 442, Khasra No.3//27/2, 15/2, 13/4/2, 14/1/2, 16 min, 17/1 min, 18/1, 16 min, 17/1 min, 4//11/12, 20/2, 20/1/2, 13//7/2 and 53/18 were the subject matter. Plaintiff and defendant Nos.1 and 2 became co-owners in the suit property. The sale deeds in favour of defendants were prior in point of time. Whereas sale deed

executed in favour of plaintiff was later in point of time. The sale deed in favour of plaintiff was executed by the attorney of Fakir Singh i.e. his wife Jaswinder Kaur. Before executing the sale deed, the attorney moved an application before the revenue authorities on 20.09.2014 for locating the property in question. The plaintiff has claimed specific possession over the property so purchased by him on the strength of sale deed dated 11.03.2014, but his vendor was uncertain about the location of the land in view of her application before the revenue authorities on 20.02.2014.

[12]. Learned Senior counsel for the respondents submitted that rights and liabilities of co-sharers are well defined in **Sant Ram Nagina Ram vs. Daya Ram Nagina Ram, AIR 1961 Punjab 528**. The ratio laid down in the aforesaid judgment was endorsed by the Full Bench of this Court in **Bhatu vs. Ram Sarup, 1981 PLJ 204**. Subsequently another Full Bench of this Court in **Ram Chander vs. Bhim Singh and others, 2008(3) RCR (Civil) 685** re-affirmed the aforesaid view.

[13]. Learned Senior counsel further submitted that mere making of construction on common land would not amount to ouster of other co-sharers and a co-sharer cannot not seek injunction against the other co-sharer from raising construction.

The only remedy available to the aggrieved co-sharer was to file a suit for partition. The aforesaid view was fully endorsed by Division Bench of this Court in **Bachan Singh vs. Swaran Singh, 2003(3) RCR (Civil) 70** wherein on the basis of judicial pronouncements on the subject matter, following opinion was given:-

“15. On a consideration of the judicial pronouncements on the subject, we are of the opinion that:

(i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession.

(ii) Mere making of construction or improvement of, in the common property does not amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which, is detrimental to his interest.

In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction restraining the co-owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner.”

[14]. In view of aforesaid, learned Senior counsel for the respondents submitted that mere making of construction would not oust the other co-sharer. The possession of the respondent was an admitted fact before the revenue authorities when application for location of the land was moved by the general power of attorney of the plaintiff vendor. A co-owner out of possession like the plaintiff was required to seek partition. For seeking injunction, plaintiff was to show that by an act of defendants the value and utility of the property would be diminished and the co-sharer out of possession can be prevented by way of injunction on such a diminution of the value and utility of the property and would also to show that the acts of co-owner in possession were detrimental to the interest of other co-sharers. There are defined grounds for seeking injunction in view of aforesaid precedents.

[15]. Learned Senior counsel for the respondent further submitted that the respondents have already got the necessary compliance done. No Objection Certification, permission for change of use land and other formalities have already been

done for the installation of the petrol pump. At this juncture, the grant of any injunction would be prejudicial to the interest of the respondents as respondents are in established possession of the land and all the three ingredients are available to the defendants.

[16]. In view of law laid down in **Jangir Singh vs. Naranjan Singh and others, 2015(1) RCR (Civil) 49**, learned Senior counsel for the respondents submitted that equal and efficacious remedy available before the plaintiff was to seek partition of the land and no injunction can be granted against the defendants being co-sharers. Learned Senior counsel highlighted that when the suit itself is not maintainable, grant of temporary injunction therein would amount to exceeding jurisdiction.

[17]. Having considered the submission made at the bar, I am of the view that since the defendants have already completed all the necessary formalities in respect of No Objection Certificate and other permissions from different departments of the Government and are in possession of the land in question, therefore, at this juncture grant of interim injunction would cause irreparable loss to the respondents. All the three ingredients are not proved in favour of the

plaintiff/petitioner rather the same are proved in favour of the respondents.

[18]. It is also a settled principle that mere raising construction by one of the co-sharer in established/exclusive possession would not amount to ouster of other co-sharer, nor the same would diminish the value and utility of the property. The ratio laid down in **Bachan Singh's** case (supra) fully applies to the facts of the instant case.

[19]. In view of aforesaid, I do not find any ground to interfere in the impugned order passed by the Additional District Judge, Jalandhar. This revision petition is dismissed. However, nothing expressed hereinabove shall be taken to be an expression of opinion on the merits of the case in any manner.

October 05, 2016

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No