

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

CR-6922-2016 (O&M)

Date of decision : 19.10.2016

Rajvinder Kaur

... Petitioner

Versus

Satnam Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner.

AMIT RAWAL, J. (ORAL)

The petitioner-defendant is aggrieved of the impugned order dated 13.02.2015, whereby the *ad interim* application of the respondent(s)-plaintiff(s) has been allowed by both the Courts below and the forcible dispossession and illegal interference had been granted in their favour.

Mr. Sanjiv Gupta, learned counsel appearing on behalf of the petitioner-defendant submits that the status of the respondent-plaintiff is of a caretaker. The suit aforementioned seeking the challenge to the recital in the sale deed in favour of the petitioner-defendant, who is the owner of the property has been challenged. In fact, Khan Singh was in possession, therefore, the status of the respondent-plaintiff is none-else, but of a caretaker and in view of the *ratio decidendi* culled out by the Hon'ble Supreme Court in **“Maria Margarida Sequeria Fernandes and others V/s Erasmo Jack de Sequeria (dead) through LRs and others” 2012 (2) RCR (Civil) 441**, the respondent(s)-plaintiff(s) cannot seek the aid of the Court and entitle to *ad interim* protection.

He submits that Rajinder Singh was the owner of the property

and he had given the permission to the father, namely, Khan Singh to cultivate the land and the respondent(s)-plaintiff(s) are none-else, but the daughters. Once, the ownership has been transferred in the name of the petitioner-defendant, the respondent(s)-plaintiff(s) have no right to retain the possession, as the recital in the sale deed shows, the handing over of the possession.

During the course of the arguments, he has drawn the attention of this Court to the khasra girdawari for the year 2007-08, whereby Khan Singh has been shown in possession of the property only upto 2007-2008, whereas he died in the year 1993, therefore, the entry in the revenue record continued for considerable period of time and the person cannot take the aid of the same.

He has further drawn the attention of this Court to the jamabandi for the year 2007-08, where the possession of the respondent(s)-plaintiff(s) though has been shown in the column of ownership, but as mother and sisters. Though in the column of ownership, the name of the petitioner-defendant is reflected, thus, the findings given by both the Courts below are totally erroneous, much less, perverse as the aforementioned documents have not been noticed.

I have heard the leaned counsel for the petitioner-defendant and appraised the paper book.

During the course of hearing of the revision petition, this Court called upon Mr. Sanjiv Gupta to apprise this Court about the status of the suit and his answer was that it was at defendant's evidence. All these questions with regard to the respondent(s)-plaintiff(s) being caretaker or the children of a caretaker would be determined by the corroborative evidence.

Even a caretaker, who is in possession, can protect the possession for the time being subject to the evidence led in support of their respective averments and therefore, the *ratio decidendi* culled out by the Hon'ble Supreme Court in "Maria Margarida's case" (supra) would not have any right for adjudication for the purpose of the disposal of the application for *ad interim* injunction, had the suit been decided on merits.

For the foregoing reasons, I do not intend to differ with discretion exercised by both the Courts below while allowing the application for *ad interim* injunction as the petitioner-defendant, for the purpose of *ad interim* injunction, has been unable to make the out case within the parameters of Order 39 Rules 1 & 2 of the Code of Civil Procedure.

No ground is made out for interference and accordingly, the revision petition is dismissed.

The trial Court shall endeavour the decision of the suit as expeditiously as possible.

This order of mine shall not construe an expression of opinion on merits and the Court shall not be influenced while deciding the controversy between the parties while deciding civil suit.

19.10.2016

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**