

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

**CR No.8221 of 2015
Decided on.27.08.2016.**

Harbhajan Kaur and others

.....Petitioners

Versus

Dilbagh Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Sandeep Bansal, Advocate
 for the petitioners.

 Mr. Veneet Sharma, Advocate
 for respondents no.1 and 2.

 Respondents no.3 and 4 *ex parte*

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred by plaintiffs-petitioners against the order dated 12.10.2015 passed by the learned Additional District Judge, Amritsar and the order dated 04.07.2015 passed by the learned Additional Civil Judge (Sr. Division), Amritsar, whereby the application moved by the petitioners under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (for short C.P.C.) for grant of ad interim injunction has been dismissed.

2. Petitioners and proforma respondent no.4 filed the suit for declaration with consequential relief of permanent injunction on the grounds *inter alia* that the suit land measuring 43 Kanals 14 Marlas detailed and described in the head note of the plaint situated within the revenue estate of village Hamja, Tehsil and District Amritsar was owned and possessed by Dalip Singh, who has further sold the same to his son Harbhajan Singh vide registered sale deed dated 16.06.1978. After the death of Harbhajan Singh, the suit property was inherited by the

petitioners. As such they are owner in possession of the suit property and defendants have no right, title or interest therein. The mutation was not sanctioned in favour of Harbhajan Singh on the basis of sale deed dated 16.06.1978 and then in favour of the petitioners-plaintiffs taking the advantage of this fact defendant no.2 filed false and frivolous suit, which was dismissed by the learned Civil Judge, Amritsar vide judgment and decree dated 02.12.2004. Thereafter, they filed the frivolous partition proceeding in connivance with each other and now they have started raising false and frivolous claim over the suit property. Hence, the suit. Along with the suit, the petitioners have moved the application for grant of ad interim injunction restraining the defendants from dispossessing the plaintiffs from the suit property illegally and unlawfully in any manner whatsoever till the disposal of the suit.

3. The suit as well as stay application was contested by the contesting respondents on the grounds *inter alia* that the alleged forged and fabricated sale deed dated 16.06.1978 never saw the light of the day though the same is alleged to have come in existence 35 years back nor the same was presented before the revenue authorities by deceased-Harbhajan Singh at any point of time. The mutation of inheritance of Dalip Singh on the basis of Will dated 14.11.1990 in favour of Harbhajan Singh and defendants no.1 and 2 has never been challenged by the plaintiffs. Harbhajan Singh has also never challenged the said mutation during his lifetime. It is further pleaded that Harbhajan Singh was owner to the extent of 1/3 share in the suit land and mutation has been sanctioned in that manner. It is further pleaded that plaintiffs have got no right with the suit land except the share of Harbhajan Singh to the extent of 1/3 share and remaining land is owned and possessed by respondents-defendants

no.1 and 2. With these pleas they pleaded for dismissal of the suit as well as stay application.

4. On appreciating the material on record and contentions raised by learned counsel for the parties, the learned trial Court has dismissed the application moved by the petitioners for grant of ad interim injunction vide impugned order dated 04.07.2015.

5. Petitioners preferred the appeal against that order, which was also dismissed by the learned First Appellate Court vide impugned order dated 12.10.2015. Hence this revision petition.

6. I have heard Mr. Sandeep Bansal, Advocate, learned counsel for the petitioners, Mr. Veneet Sharma, Advocate, learned counsel for respondents no.1 and 2 and have meticulously gone through the paper book.

7. Initiating the arguments, learned counsel for the petitioners contended that Harbhajan Singh, the predecessor-in-interest of the petitioners has purchased the suit land from his father Dalip Singh vide registered sale deed dated 16.06.1978. The registered sale deed dated is the document of title. After the death of Harbhajan Singh, the suit property was inherited by plaintiffs being his legal heirs. Mere this fact that the mutation was not sanctioned on the basis of said sale deed is of no legal consequence. After the death of Harbhajan Singh, petitioners-plaintiffs have become the owner in possession of the suit land and were entitled for injunction. He contended that the learned Courts below have declined the injunction simply on the ground that their name does not figured in the Jamabandi in the column of cultivation. He contended that as Harbhajan Singh has died, being his successors plaintiffs have come in possession of the suit property. Thus, they are entitled for the ad interim

injunction.

8. On the other hand, learned counsel for the respondents contended that the sale deed dated 16.06.1978 is a false and fabricated document. Harbhajan Singh never presented the said document before the revenue authorities. No mutation was sanctioned on the basis of said sale deed and this sale deed did not see the light of the day for more than 35 years. He further contended that the mutation was sanctioned in favour of all the three sons of Dalip Singh with respect to the suit property on the basis of the Will in the presence of Harbhajan Singh and he has not raised any objection at that time. He further contended that there is no material on record to show that the plaintiffs are in possession of the suit property. In-fact, Barljinder Singh son of Harbhajan Singh and Yuvraj Singh, the grand son of Harbhajan Singh have already mortgaged their share to the bank and now they want to interfere in the possession of respondents over their share of land. He further contended that Harbhajan Singh had no right, title or interest in the suit property beyond 1/3 share inherited by him from Dalip Singh on the basis of the Will dated 14.11.1990. Even otherwise, the respondents are co-sharers in the suit property and no injunction can be issued against them.

9. I have duly considered the aforesaid contentions.

10. In order to secure the relief of ad interim injunction, petitioners were required to establish that they are in exclusive possession of the suit property. But, they had utterly failed in this regard. Petitioners have relied upon the judgments passed by the Civil Court in previous suits. Civil Suit No. 276 of 1996 was filed by Bhupinder Singh-respondent no.2 against Harbhajan Singh, wherein the sale deed dated 16.06.1978 was challenged. The said suit filed by Bhupinder Singh was

dismissed by the learned Civil Judge. In that suit no specific finding has been given by the learned Civil Judge that Harbhajan Singh was in exclusive possession of the suit property. Another suit was filed by Baljinder Singh- petitioner no.2 against the State Bank of India and respondent no.2-Bhupinder Singh for declaration challenging the mortgage deed dated 31.08.1985 executed by Bhupinder Singh in favour of State Bank of India. The said suit has been decreed by the learned Civil Judge on 17.09.2014 and the mortgage deed dated 31.08.2005 executed by respondent no.2-Bhupinder Singh was declared illegal and invalid and was set aside. Even in that suit, no specific finding has been given that the plaintiffs-petitioners are in exclusive possession of the suit property. The findings in both these suits have been given with respect to the ownership alone. Admittedly, in the revenue record, the plaintiffs-petitioners have not been shown to be in possession of the suit land. So, *prima facie* the petitioners have failed to show their exclusive possession over the suit property. Consequently, they have not been able to establish the *prima facie* case in their favour. The balance of convenience is also not in their favour and they are not going to suffer any irreparable loss.

11. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the impugned orders passed by the learned Courts below, which does not call for any interference by this Court.

12. Thus, the present revision petition having no merits, is hereby dismissed.

(DARSHAN SINGH)
JUDGE

27.08.2016

S.khan

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No