

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

CRM-M-34152 of 2014

Date of Decision: September 06, 2016

Parshotam Dass

...Petitioner

Versus

Surinder Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Dr. Surya Parkash, Advocate
for the petitioner.

Mr. Navdeep Monga, Advocate
for respondent No.1.

Mr. Jasjeet Dhaliwal, DAG, Punjab.

FATEH DEEP SINGH, J.

This is a petition under Section 482 Cr.P.C. whereby, the petitioner has sought to seek quashment of orders dated 16.07.2014 passed by the Court of learned Additional District and Sessions Judge, Mansa, whereby, earlier orders dated 31.10.2011 passed by the learned Sub Divisional Magistrate, Mansa appointing a receiver qua immovable property comprising of a land were reversed.

Heard learned counsel for the parties and perused the records of the case. It is the claim of the petitioner that he had purchased 66/865th share out of 43 Kanals, 05 Marlas of land out of which 12 Kanals,

18 Marlas had already been acquired. The stand of the petitioner is that he is owner of 02 Kanals and 07 Marlas out of total remaining land of 30 Kanals and 07 marlas which is well depicted in the revenue records and is still as per this record to be joint in ownership and possession. It is the averment of the petitioner that respondent No.1 Surinder Kaur has made an agreement dated 28.07.1976 with her co-sharers regarding partition of this land and in the process the petitioner and respondent No.1 remained co-sharers of their residual land separated from the land of other co-sharers by virtue of this agreement. It was thereafter on 30.10.1976 respondent No.1 executed a partition deed with the petitioner and, thus, they segregated their respective shares of land, as a consequence of which, specific portion of the land had come about in favour of the petitioner who became its owner and in possession. It was mentioned in this settlement that the petitioner has been given the land adjoining to Lajpatrai and the land next to it remained with respondent No.1. It is during the course of events, respondent No.1 who happens to be the owner of 11 marlas of land having purchased the land as follows:-

1. Sale deed dated 24.02.1969	:	06 Kanals, 12 Marlas
2. Sale deed dated 12.08.1974	:	01 Kanal, 06 Marlas
3. Sale deed dated 02.09.1974	:	01 Kanal, 03 Marlas
4. Sale deed dated 18.04.1977	:	02 Kanal 10 Marlas
Total	:	11 Kanals, 11 Marlas

It is the claim of the petitioner that vide sale deed dated 18.04.1977 respondent No.1 purchased 02 Kanals and 10 Marlas from the co-sharers, who claimed to have partitioned their property vide agreement dated 28.07.1976 Annexure P/2 but that was at the back of the petitioner which has no impact legitimately over his own property. It is much in

evidence as per the statements of the two sides that petitioner filed a civil suit No.424 dated 17.12.1980 for declaration and injunction against the respondent No.1 regarding this disputed land measuring 02 Kanals and 07 Marlas. Respondent No.1 appeared in the said suit and filed written statement, wherein, she took the stand admitting that land measuring 02 Kanals and 07 Marlas came to the share of then plaintiff now petitioner in the partition between the petitioner then plaintiff and respondent No.1 then defendant. It was thereafter, on 30.01.1981 both the parties made statements in the Court of learned Sub Judge, 1st Class, Mansa, Annexures P/6 and P/7. It is subsequently the petitioner claims that respondent No.1 had started interfering in his share of the property leading to multiple litigations and it was before this Court in CRM-M-45159 of 2007 on 19.02.2009 learned counsel for respondent No.1 had made statement that she was not in possession of land in excess of the land purchased by her and if she is found to be so she is ready to part with the same in favour of rightful owner. It is worthwhile to refer here that as per the report of the Local Commissioner Annexure P/9 and orders passed thereon Annexure P/8 it leads to that instead of genuine possession of purchased land of 07 Kanals and 02 Marlas respondent No.1 had taken possession of 16 Kanals and 12 Marlas of land and on the basis of stand of the two sides orders dated 22.4.2009 Annexure P/10 were passed by this Court. It is during the course of the events when respondent No.1 tried to take law in her hands petitioner claimed that he has moved to Inspector General of Police, Patiala by virtue of his complaint and as a consequence of which local Police initiated proceedings under Section 145 Cr.P.C in the Court of learned SDM, Mansa Annexure P/12. It is during the proceedings before the learned SDM, Mansa

orders Annexure P/14 were passed and which is a subject matter of dispute before this Court, whereby, the Court had appointed a Tehsildar as a receiver and after hearing the parties had held that it was difficult to make out which of the parties are in possession of disputed property and, thus, to maintain law and order it is ordered by Civil Court that after partition of the disputed land the parties should possess the piece of land according to their share and none of them would interfere in the share of the other. It was against that very order respondent No.1 had filed revision petition before the learned Additional Sessions Judge, Mansa who passed orders dated 16.07.2014 Annexure P/17 setting aside order of SDM, Mansa directing the parties to lead evidence in support of their respective claims and, thus, nullifying the effects of the same.

From the statements of the two sides and their respective stands during the course of proceedings, it is well evident that there is a dispute over land bearing Khasra No.382/2 and it is nowhere clear from any of the documents and the evidence that which party was in legal and physical possession and which had necessitated the learned SDM, Mansa to attach this property and to appoint Tehsildar as receiver directing him to take possession of this disputed land and to let it out on contract and income derived therefrom should be deposited in the Treasury and it is only after final outcome the income would be apportioned. Learned counsel for the respondent during the course of submissions to the very query of the Court could not highlight how or in what manner respondent No.1 claims herself to be the owner and in possession of this specific piece of property. Since she claims to be owner as well as in possession of particular piece of land which admittedly and irrefutably is unpartitioned joint property

documentarily and as per her own stand then by virtue of Sections 101,102 of the Evidence Act she is bound to prove existence of that very fact and since burden to prove rests upon her and as long as there is no evidence it would be too preposterous to decide it by any such arguments by any of the sides.

Looking from another angle, admittedly respondent No.1 as has been brought to the notice of this Court had made an admission in a written statement in a civil suit and, thus, such an admission in a Court of law which is a statement either orally or in writing by the party or her agent certainly binds the maker of that very statement in terms of Section 18 of the Evidence Act and, therefore, binds that party by virtue of Section 20 of the Evidence Act. Learned counsel for respondent No.1 could not convince this Court by any means how by virtue of applicability of Section 23 of the Evidence Act such an admission by his party was not of binding nature. It was on the basis of this stand by respondent No.1 petitioner was made to take his stand and accept it so certainly now she cannot wriggle out of the stand made in the Court of law that too in writing. Learned SDM, Mansa had afforded the parties to file their written stands with documents and had come to the conclusion in his preliminary order that without there being any tangible evidence over the ownership and possession of the disputed land and in the absence of the same thought it prudent to appoint a receiver meanwhile which would be beneficial for both the parties and till then had directed both the parties to lead comprehensive evidence in support of their respective claims and counter-claims and it is also the conclusive finding of the Court below as is enumerated in the order of the learned SDM that after partition of the disputed land the parties should

possess the piece of land according to their share. Learned counsel for respondent No.1 could not convince this Court how the same is detrimental to the interest of respondent No.1 and how the same was illegal or improper as the Court below was of the view that for the partition of the land it is essential to determine the respective shares of the parties. Provisions of Section 146(1) Cr.P.C deals with such eventualities and cases of emergency where a Court is unable to decide which of the party was in possession as is referred to in Section 145 Cr.P.C. or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he has right to attach the property subject matter of dispute enabling the competent Court to decide the rights of the parties thereto with regard to the person entitled to the possession thereof. Since it was a case of an emergent nature to be by way of summary proceedings and, thus, to ward off any such mishappening and threat to law and order has thought it prudent to pass an immediate orders to maintain the situation in larger public interest and in the interest of justice of both the sides and, thus, this Court does not finds any illegality or impropriety which necessitated the learned Additional Sessions Judge to have intervened in the matter and it would have been beneficial for both the parties if it would have facilitated expeditious disposal of the matter which rather has sought to fade away by such rise to multiplicity of litigation. Moreover, there was no apparent illegality or perversity in such order. Thus, in the totality what has come across before this Court there was no such eventuality for the Court below to have passed the impugned order dated 16.07.2014 which is certainly misconstruing the procedure adopted and is devoid of any merits and stands set aside by way of acceptance of the instant petition.

Parties through their counsel are directed to appear before the Court below who may proceed ahead into the matter as per law.

(FATEH DEEP SINGH)
JUDGE

September 06 2016

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