

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

C.R. No. of 2595 of 2017 (O&M)

Date of Decision : 21.11.2017

Major Singh

.... Petitioner

Versus

Mavnveen Kaur and others.

.... Respondent(s)

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Rishu Mahajan, Advocate
for the petitioner.

Mr. Vivek Salathia, Advocate
for the respondent No.1.

None for respondents No.2 and 3.

B.S.WALIA, JUDGE (ORAL)

C.M. 7963-CII of 2017

Application for exemption from filing certified copies of
Annexure P-1 to P-5 is allowed.

C.M. 7964-CII of 2017

Application for placing on record Annexure P-1 to P-5 is
allowed, subject to all just exceptions. Annexure P-1 to P-5 are taken on
record.

C.R. No.8120 of 2016

[1] Prayer in the revision petition is for setting aside order dated
03.01.2017 passed by the learned Additional District Judge, Amritsar
whereby application filed by the plaintiff-respondent under Order 39
Rules 1 & 2 CPC was allowed.

[2] Learned counsel contended that the learned trial Court
dismissed the application under Order 39 Rules 1 and 2 on the ground that

the plaintiff-respondent had not been able to prima facie prove that plot No. 49/53 measuring 250 sq. yards situated in Khasra No. 486 in respect of which relief was claimed was located in Khasra No. 486 min, that in the circumstances location of the plot was a matter of evidence, therefore, the learned Lower Appellate Court had erroneously reversed the order passed by the learned trial Court and allowed the application under Order 39 Rules 1 and 2 CPC.

[3] I have heard learned counsel and also considered their submissions. Learned counsel for the defendant petitioner, fairly admitted that the defendant petitioner had purchased 200 sq. yards plot No. 53 in Khasra No. 466 min from Amarjit Singh vide sale deed dated 06.11.2012 in pursuance of power of attorney conferred on him by one Bhupinder Singh and that the plot of the plaintiff-respondent bearing No. 49/53 was located in Khasra No. 486 at a distance of 500 yards and defendant-petitioner had nothing whatsoever to do with the plot of the plaintiff respondent.

[4] Learned counsel for the plaintiff-respondent, contended that as per defendant No. 1-petitioner, Bhupinder Singh had purchased plot of 100 Sq. yards from Sawan Singh, Kartar Kaur etc vide sale deed dated 27.10.1990 and thereafter given power of attorney in respect of the plot purchased by him to Amarjit Singh, then obviously it could not be for more than the plot size purchased by him i.e. 100 Sq. yards whereas the power of attorney was for a 200 Sq. yards plot while the plot size of the plaintiff respondent was of 250 Sq. yards besides, no document had been produced that the suit property was in Khasra No. 466.

[5] Learned Counsel further contended that the suit was in respect of plot No. 49/53 measuring 250 sq. yards located in Khasra No. 486 which had

been purchased by the plaintiff's mother Parkash Kaur vide sale deed dated 23.05.1990 and duly registered in her favour whereafter the plot in question was transferred by her mother in her favour, again by a registered transfer deed dated 29.01.2009. Learned counsel contended that the documentary evidence to the above effect had been placed on the record as also from the revenue authorities that plot No. 49/53 measuring 250 sq. yards was situated in Khasra No. 486. On the basis of the same learned counsel contended that since it was the admitted stand of the defendant-petitioner that the size of his plot was 200 sq. yards and bore a different number i.e 53 and was situated in Khasra No. 466 at a distance of 500 yards from Khasra No. 486, then it was evident that the plaintiff-respondent had prima facie proved the case in her favour, therefore, the learned Lower Appellate Court had rightly granted her the ad interim injunction.

[6] Since the suit was in respect of plot No. 49/53 measuring 250 sq. yards located in Khasra No. 486 and documentary proof of the plot having been purchased vide registered sale deed dated 23.05.1990 by the plaintiff's mother as also of the same having been transferred by the plaintiff's mother in her favour vide registered transfer deed dated 29.01.2009 has been placed on record in addition to documentary evidence from the revenue authorities that plot No. 49/53 measuring 250 sq. yards was situated in Khasra No. 486, and it is the admitted stand of the defendant-petitioner that the size of his plot is 200 sq. yards and bears a different number i.e 53 and is situated in Khasra No. 466 at a distance of 500 yards from Khasra No. 486, then the submission of learned counsel that the plaintiff respondent had prima facie proved her case and the learned Lower Appellate Court had rightly allowed the application under Order 39 Rule 1 and 2 CPC merits acceptance.

[7] At this stage, learned counsel for the defendant-petitioner states that the only grievance of the defendant-petitioner is that the plaintiff respondent in the garb of the order of the learned Lower Appellate Court should not interfere with plot No.53 of 200 sq. yards in Khasra No. 466. Learned counsel for the plaintiff-respondent, responded by stating that the claim of the plaintiff-respondent was qua plot No. 49/53 measuring 250 sq. yards situated in Khasra No. 486 only and that the plaintiff respondent had nothing whatsoever to do with plot No. 53, measuring 200 sq. yards in Khasra No. 466.

[8] In the light of the position as noted above, the order passed by the learned Lower Appellate Court cannot be said to be suffering from any infirmity, accordingly is upheld and the revision petition dismissed. However, nothing said in this order shall be taken as an expression on the merits of the case.

(B.S.WALIA)
JUDGE

November 21, 2017

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| 1. | Whether speaking/reasoned: | Yes/No |
| 2. | Whether reportable: | Yes/No |