

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**  
**Sr. No.: 112**

**Civil Revision No.2605 of 2017 (O & M)**

**Date of Decision: April 17, 2017**

**Jaswinder Singh**

.... PETITIONER

*VERSUS*

**State of Punjab & another**

..... RESPONDENTS

. . .

**CORAM: HON'BLE MR. JUSTICE JASPAL SINGH**

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**PRESENT:** - Mr. R.D. Bawa, Advocate, for the petitioners.

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**Jaspal Singh, J**

1. By virtue of the instant petition preferred under Article 227 of the Constitution of India, petitioner – plaintiff has sought setting aside of order dated November 26, 2015 passed by the Civil Judge (Junior Division), Ludhiana, whereby an application moved under Order XXXIX Rule 1 & 2 CPC read with Section 151 for stay of auction of land in suit, has been dismissed as well as order dated May 09, 2016 passed by the Additional District Judge, Ludhiana, vide which, an appeal preferred by the petitioners against order passed by the trial court has been dismissed.

2. Briefly stated, the facts giving rise to the instant petition are that originally, one Pritam Singh son of Chanan Singh was owner in

possession of land measuring 7B-3B-10B Pukhta comprised in Khewat No.29, Khatauni No.100, Khasra No.568/515/429/233 to 432, 520/429 to 432/233, 604/58, 400/57, 399/57, 155, 60, 59, 630/75 76, 78, 79, 132, 135, 116, 131, 405/80, 409/81, 79 situated at village Sanghe, Hadbast No.207, Tehsil & District, Ludhiana. Pritam Singh mortgaged his property to Kartar Singh for an amount of ₹ 500/- with delivery of possession to Kartar Singh in the month of January 1937. Since the time of mortgage, Kartar Singh was in possession of the property in dispute as mortgagee. Thereafter, the mortgagee rights kept on inherited. However, Pritam Singh mortgager has not been heard. Neither his whereabouts are known to any person nor his relatives for the last 60 years. He was unmarried and issueless. However, the land stood in his name upto the year 1991. Mutation No.609 regarding the inheritance of Pritam Singh was entered as he died a civil death being not heard for more than 30 years, the statutory period under the provisions of law. The mutation was contested by Surjit Kaur alleging herself to be daughter of Chanan Singh and sister of Pritam Singh, on one side and Sher Singh son of Phuman Singh, Maghar Singh & others on the other side. The mutation proceedings were decided by the Assistant Collector First Grade, Ludhiana, vide order dated January 15, 1991, vide which, mutation in favour of State Government was sanctioned as there was no legal heir of deceased Pritam Singh. Plaintiff alleged that, he and other mortgagees were in lawful and authorized possession of the property in dispute as Pritam Singh did not redeem the mortgage of the property. Pritam Singh had mortgaged the property to the ancestors of plaintiff. It is averred by the plaintiff that as per order dated January 15, 1991, State Government was duty bound to get the property redeemed from the mortgagees before taking possession of the

respondent No.1 – State took the possession of the property in dispute from the mortgages in the year 2004 illegally and forcibly. Accordingly, plaintiff preferred a suit for grant of decree for permanent and mandatory injunction. Plaintiff also moved an application under Order XXXIX Rules 1 & 2 CPC read with Section 151 CPC for stay of auction of suit which has been dismissed vide impugned order dated November 26, 2015 passed by the trial court, which has further been upheld by the lower appellate court vide other impugned order dated May 09, 2016 while dismissing the appeal.

3. While assailing the impugned orders, it has been argued with vehemence by learned counsel for the petitioner that the same are absolutely against the evidence available on file and settled canons for governing the grant of injunction. Both the courts below have erred in dismissing the application moved by the petitioner - plaintiff under Order XXXIX Rules 1 & 2 CPC. Both the courts below have fallen in error which has resulted into causing of great prejudice and hardship to the petitioner – plaintiff while dismissing the aforesaid application. Consolidation of land of village Sanghe took place in the year 1962 in which new Khasra numbers were carved out in place of old Khasra numbers. The predecessors of petitioner were allotted new numbers of land in question of which they are mortgagees in possession. The Consolidation Department delivered the possession of the land in question to the forefathers of petitioner & his co-sharers. As such, the petitioners and his co-sharers became mortgagees in possession of the land in suit. However, ownership stood in the name of Pritam Singh.

4. Learned counsel for the petitioner has further contended that since January 1950, the predecessors-in-interest of petitioner & his co-sharers; and thereafter, petitioner & his co-sharers continuously remained in

possession of the land as mortgagees, which was never disturbed by anyone nor the land in question as got redeemed by Pritam Singh or his successor(s). Even the statutory period of 30 years for getting the land redeemed also elapsed. Moreover, Pritam Singh was not heard and his whereabouts were not known to anybody even after the lapse of 60 years. He was unmarried and issueless. Mutation No.609 was sanctioned as he died a civil death being not heard for more than 30 years. The Assistant Collector First Grade, vide order dated January 15, 1991 sanctioned the mutation of inheritance in favour of State Government as there was no legal heir of deceased Pritam Singh.

5. Learned counsel for the petitioner has contended that the land in question has not been redeemed so far. As such, petitioner and his co-sharers are still mortgagees in possession of the property but respondent No.1 – State illegally and forcibly took possession of the land. The courts below have mixed the question of inheritance of estate of Pritam Singh with the question of possession of mortgagees without taking into account the issue of redemption. Accordingly, the impugned orders are not sustainable in the eyes of law and liable to be set aside by way of acceptance of the instant revision petition.

6. After bestowing due consideration to the aforesaid submissions made by learned counsel for the petitioner and scrutinizing the impugned orders and the documents available on file, this Court is of the considered view that the impugned orders do not suffer from any infirmity, illegality or perversity, rather the same are absolutely in consonance with the settled principles of law governing the grant of injunction.

5. Before proceeding to decide the matter in controversy on merits, it would be desirable to highlight the extent and scope of jurisdiction

of the lower appellate court or the revisional court to interfere with the order passed by the trial court in exercise of its discretion under Order XXXIX Rules 1 & 2 CPC. The extent and scope of jurisdiction was discussed at length by the Rajasthan High Court in Vimla Devi Vs. Jang Bahadur, AIR 1977 Rajasthan 196 wherein the legal proposition was summed up in the following words:-

“The order refusing temporary injunction of a discretionary character.

Ordinarily Court of appeal will not interfere with the exercise of discretion by the trial Court and substitute for it its own discretion. The interference with the discretionary order, however, may be justified if the lower Court acts arbitrarily or perversely, capriciously or in disregard of sound legal principles or without considering all the relevant records.

The mere possibility of the Appellate Court coming to a different conclusion on the same facts and evidence will also not justify interference.”

6. Similar view has been expressed by this Court in Krishan Kumar v. The State of Haryana and another, 1992(1) RRR 433 (P&H) : 1992(1) Revenue Law Reporter 207, wherein this Court has observed as under:-

“A perusal of the appellate court’s order shows that it has not assigned any cogent reason to set aside the discretion exercised by the trial court. The lower appellate court has not demonstrated as to how admitted facts and principles of law have been wrongly applied. This Court, therefore, is of the opinion that the lower appellate court was not justified in setting aside the order and interfering in the discretion exercised by the trial court.”

7. Both the above referred judgments were further relied upon by this Court while rendering pronouncement in case Guru Nanak Education Trust v. Balbir Singh, 1995 AIR (Punjab) 290 : 1995(3) R.R.R. 721.

8. Undisputably, the property in dispute was owned by Pritam Singh son of Chanan Singh. He mortgaged the property to Kartar Singh in

the year 1937. After the death of Kartar Singh, his son Bhajan Singh came into possession of the suit property who sold his mortgagee rights to Kehar Singh, Sher Singh, Sarwan Singh and Prem Singh in the year 1950, predecessors of the petitioner. Since Pritam Singh was unheard for more than 30 years, mutation qua the property in dispute was entered in favour of the State Government vide order dated January 15, 1991 as there was no legal heir of Pritam Singh. Order dated January 15, 1991 has not been challenged by the petitioner. Consequently, the State Government became owner and in possession of the suit property and it has every right to lease out the land by conducting open auction in which even the petitioner can also participate. Even the suit itself has been filed by the petitioner – plaintiff for permanent and mandatory injunction only. There is nothing on the record to prove the possession of petitioner over the suit property since sanctioning of mutation in favour of respondent No.1. Respondent No.1 – State being the owner and in possession of suit property has been giving this land on chakota on auction by conducting auction every year continuously and amount realized therefrom is deposited in the account of Government. In case, respondent No.1 – State is restrained from auctioning the land, an irreparable loss would be suffered by it. Moreover, petitioner has not challenged the previously successful auctions till date. As such, this Court is of the considered view that balance of convenience or irreparable loss does not seem to lie in favour of the petitioner by staying the auction. Thus, there is nothing on the record to suggest that courts below have acted arbitrarily, perversely, capriciously or in disregard of sound legal principles or without considering all the relevant records. Thus, the impugned order and judgment do not call for any interference by this Court, especially in the circumstances

that the courts below have exercised the discretion in a very judicious manner.

9. As a net result of the aforesaid discussion, this Court is of the considered view that the instant petition is devoid of merits, and as such, the same is dismissed, whereby impugned order dated November 26, 2015 passed by the trial court as well as order dated May 09, 2016 passed by the lower appellate court are upheld.

12. However, any observation made in this judgment shall have no bearing on the merits of the main case which shall be decided by the trial court independently on the basis of evidence brought on record by the parties in respect of their respective pleadings, that too, without being influenced by any observation made herein.

13. No order as to costs.

**April 17, 2017**  
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**(Jaspal Singh)**  
**Judge**

Whether Speaking/ Reasoned:  
Whether Reportable:

Yes/ No  
Yes/ No