

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

CR No.3615 of 2017(O&M)

Date of decision: 11.9.2017

Om Sarup Sharma

.....Petitioner

VERSUS

Pawandeep Sharma

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Mr. M.S. Atwal, Advocate for the caveator/respondent.

REKHA MITTAL, J.

The present petition directs challenge against order dated 24.04.2017 (Annexure P-5) passed by the Additional District Judge, Hoshiarpur whereby appeal of the respondent has been allowed and the order dated 20.12.2016 (Annexure P-3) passed by the trial Court allowing interim injunction in favour of the petitioner has been set aside.

Counsel for the petitioner has submitted that respondent is son of the petitioner from his first wife. Certain litigations were pending in the Court wherein the parties were referred to the mediation and conciliation centre at Hoshiarpur. The dispute between Ravinder, another son of the petitioner, petitioner Om Sarup and respondent Pawandeep Sharma through his attorney Nisha wife of Pawandeep Sharma was settled vide compromise/settlement dated 10.06.2016 (Annexure P-6). As per the settlement, petitioner was given absolute ownership of 2 kanal of area,

subject matter of tabdil/malkiatnama dated 10.06.2016. It has further been argued that according to para 4 of the settlement (Annexure P-6), it was agreed that the petitioner and the respondent shall jointly move an application before Assistant Collector Ist Grade for partition of land comprised in khasra No.12//12/1/2 (3-16) (which is not in issue) and khasra No.12//19/1 (02-14) from which the land has been transferred to Om Sarup within one month from 10.06.2016. Further submitted that as the respondent did not come forward to file an application for partition in terms of the settlement (Annexure P-6), the petitioner was constrained to file an application before the competent authority for partition of the land in May 2017. Counsel for the petitioner, by relying upon the site plan (Annexure P-8) would urge that as 2 kanals of land which was given to the petitioner in pursuance of the settlement (Annexure P-6) is not abutting any passage, respondent cannot be allowed to alienate land in question, subject matter of the suit till the partition proceedings culminates in an order of partition. It is further submitted that the Court in appeal committed a serious error rather illegality by setting aside the well-reasoned order passed by the trial Court accepting plea of the petitioner for grant of interim injunction.

Counsel representing the respondent, on the contrary, has supported the impugned order with the submission that the Appellate Court on a detailed consideration of inter se rights of the co-sharers has rightly held that a co-sharer cannot seek injunction against alienation or delivery of possession of joint land which would always be subject to adjustment at the time of final partition. It has been argued with vehemence that the respondent is at present residing with his second wife namely Sushila and

land in possession of Sushila has been reflected in blue colour in the site plan (Annexure P-8). Prior to settlement dated 10.06.2016 (Annexure P-6), the respondent was exclusive owner of land comprising khasra No.12//12/1/2 (3-16) and 12//19/1 (2-14) recorded in jamabandi for the year 2008-09 placed on record. In pursuance of the settlement, the respondent through his wife and attorney Nisha executed a registered deed dated 10.06.2016 wherein it has been specifically mentioned that land measuring 2 kanal along with rasta with all rights appurtenant thereto have been transferred by Pawandeep in favour of Om Sarup. Along with the transfer deed, site plan was appended depicting the land and rasta 2 karam given to the transferee by the transferor. According to counsel, in the face of the registered transfer deed dated 10.06.2016 along with site plan appended thereto, no such contention of the petitioner can be accepted that he does not have any rasta to have access to land measuring 2 kanals which was transferred in his favour in view of settlement (Annexure P-6). It is further argued that the petitioner in place of being satisfied with good gesture shown by the respondent by transferring his 2 kanals of land without getting any benefit in lieu thereof has entangled the respondent in litigation with an intention to cause him harassment, mental tension and difficulty. It is argued that as the petitioner till date has not challenged the transfer deed or correctness thereof on any count whatever, no such contention of the petitioner can be accepted that since he is entitled to have right of passage to his 2 kanals of land out of the joint land comprising the aforesaid two khasra numbers, injunction is required to be issued against the respondents. Another submission made by counsel is that as per the compromise and transfer deed, the petitioner was delivered possession of 2

kanals of land which was given to him as per the settlement. A co-owner in exclusive possession of joint land can alienate the land to the extent of his share and deliver possession thereof to his vendee though subject to adjustment of rights of the parties at the time of final partition. Any alienation by the respondent in respect of the land of his share would not cause prejudice to the petitioner who has already filed an application for partition of the joint land. Counsel would urge that vendee of the respondent would step into the shoes of the respondent, thus, would not be entitled to claim any better rights in the joint property more than what are available to the respondent, therefore, alienation of the joint land by the respondent would not result in irreparable loss or injury to the petitioner nor non-grant of injunction would cause any inconvenience for the petitioner. The last submission made by counsel is that the learned trial Court without correctly appreciating the inter se rights of the joint owners and without recording any finding of prima facie case, balance of convenience and irreparable loss or injury allowed injunction in favour of the petitioner but the error committed by the trial Court has been rightly rectified by the Court in appeal and as such the order impugned does not warrant intervention.

I have heard counsel for the parties, perused the paper-book particularly the various annexures appended with the petition and the documents made available by counsel for the respondent during the course of hearing.

Counsel for the petitioner has not disputed that prior to settlement dated 10.06.2016, the petitioner was made absolute owner in possession of 2 kanals of land out of khasra No.12//12/19/1 and the

remaining 14 marlas of the land of the said khasra number adjoining khasra No.12//12/1/2 was to remain as the absolute ownership of respondent Pawandeep Sharma. It was also agreed that remaining safeda trees standing in khasra No.12//12/1/2 shall be ownership of Pawandeep Sharma and he would be at liberty to deal with it as per his volition. It has also been stated in the settlement that the parties have been put in actual, physical possession of the properties as per settlement, they shall not interfere in possession of each other. There is no denial that on 10.06.2016, Nisha wife of Pawandeep Sharma being his attorney executed the transfer deed that makes reference to transfer of 2 kanals of land along with right of passage and a site plan was appended thereto depicting the land and 2 karam passage. At this stage, there is no prima facie case in favour of the petitioner that he has no passage for having access to 2 kanals of land which was transferred in his favour by the respondent.

The Court in appeal has rightly appreciated the legal position qua inter se rights of the co-sharers either to seek injunction against alienation or delivery of possession of joint land which is in exclusive possession of one of the co-sharers subject, however, to adjustment of rights of the parties at the time of partition. Any alienation of the joint land by the respondent would not result in irreparable loss or injury to the petitioner as vendee from the respondent would merely step into his shoes and would not get something more than what is available to the respondent. In this view of the matter, I find myself unable to accept contentions of the petitioner that the order impugned is erroneous much less perverse warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed. However, nothing stated hereinbefore shall cause prejudice to either of the parties at the time of disposal of suit on merits.

SEPTEMBER 11, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no