

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

**CR No. 7617 of 2016
DECIDED ON: MARCH 02, 2017**

HARINDER SINGH

....PETITIONER

VERSUS

DHIAN SINGH & OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Ms. Satpreet Grewal Kapila, Advocate
for the petitioner.

JASPAL SINGH, J

Challenge in this revision petition preferred under Article 227 of the Constitution of India is to the order dated September 01, 2016 (Annexure P-6) passed by learned Additional District Judge, Hoshiarpur, vide which a well reasoned order dated July 30, 2015, passed by learned Additional Civil Judge (Jr. Division), Dasuya has been set aside.

The contention of learned counsel for the petitioner is that the petitioner/plaintiff purchased land measuring 0K-16M out of khasra No. 857/418, 419 to 423 (14K-0M) bearing Khata No. 114/181 situated at village Chandidas, H.B. No. 136, Tehsil Dasuya for a consideration of ₹4,00,000/- vide registration of sale deed dated July 24, 2009 from respondents/defendants No.2 to 8 and at the time of execution of registration of afore-said sale deed the

possession of the land i.e. the subject matter of the sale deed was delivered to him. Since then, he is in possession thereof. Out of the afore-said land measuring 0K-16M land measuring 0K-3M has been acquired by the Irrigation Department vide notification No. 2006/3-INV/88, dated October 11, 1988. However, the mutation on the basis of afore-said sale deed could not be sanctioned in favour of the petitioner/plaintiff and was rejected by the Tehsildar on the ground that first the Punjab Government will take step to get the mutation sanctioned in respect of the land acquired by it. The petitioner/plaintiff is in actual physical possession of the suit property measuring 0K-13M as owner. Considering the documents and legal proposition, learned trial Court allowed the said application vide order dated July 30, 2015, which has been set aside by lower Appellate Court vide order dated September 01, 2016 without assigning any cogent or convincing reason.

Since the petitioner/plaintiff is in exclusive possession of the land measuring 0K-13M purchased by him vide registered sale deed dated July 24, 2009. As such, he has every right to protect its possession by way of seeking an injunction against the respondents/defendants. Thus, the impugned order dated September 01, 2016 is liable to be set aside and order dated July 30, 2015 passed by learned trial Court deserves to be restored.

This Court has given an anxious thought to the afore-said submissions made by learned counsel for the petitioner but find the same to be without any legal or factual weight.

Undoubtedly, petitioner/plaintiff had purchased land measuring 0K-16M out of khasra No. 857/418, 419, 423 (14K-0M) bearing Khata No. 114/181 situated at Village Chandidass as per jamabandi for the year 2006-2007

vide registered sale deed dated July 24, 2009. Out of the land so purchased by the petitioner the land measuring 0K-3M was acquired by the Irrigation Department vide notification No. 2006/3-INV/88, dated October 11, 1988 and still the plaintiff/petitioner is the owner to the extent of 0K-13M of the land out of the land purchased by him vide sale deed dated July 24, 2009. On purchase of the land above, he became co-sharer and came in joint possession of the property measuring 14K-0M detailed as described above. There is nothing on record to suggest that the respondents/defendants No.2 to 8 were in exclusive possession of area sold by them to the petitioner/plaintiff. When they were not in exclusive possession of the property subject matter of the suit, they cannot transfer better title or interest they have in the disputed property. At the most, petitioner/plaintiff can be said to be a co-sharer in joint possession of the suit property.

The rights and liabilities of a co-sharer were settled by Hon'ble Full Bench of this Court in the case of ***Bhartu vs. Ram Sarup; 1981 PLJ 204***. It was observed in this case that possession of joint property by one co-sharer is deemed to be possession of all even if all but one are actually out of possession that every co-sharer has a right to use the joint property in a husband like manner not inconsistent with similar right of other co-sharer. In the case in hand, petitioner/plaintiff has failed to establish that he is in exclusive possession of the suit property i.e. land measuring 0K-13M out of the joint holding. As such, an injunction sought by the petitioner/plaintiff has rightly been declined by lower Appellate Court vide order dated September 01, 2016.

It is also equally settled that suit for injunction is not legally maintainable at the instance of co-sharer against a co-sharer. A copy of

jamabandi for the year 2006-2007 clearly reflects the joint possession of all the co-sharers. Thus, in such a situation, alternative remedy available to a co-sharer is to seek partition of the joint property and the suit for injunction is not legally maintainable.

In the light of what has been discussed above, this Court does not find any legal flaw or perversity in the impugned order dated September 01, 2016. Rather, this court is of the considered view that that the impugned order is absolutely inconsonance with the evidence available on file and settled cannons of law governing the grant or decline of injunction.

As an upshot of the afore-said discussions, this Court is of the considered view that there is no illegality or perversity in the impugned order. As such it stands dismissed.

MARCH 02, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*