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

**Civil Revision No.7784 of 2016
Date of Decision: 26.09.2017**

SURINDER KHANNA

.....Petitioner

Vs

EXECUTIVE OFFICER & ANR

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Ashok Singla, Advocate with
Mr. Ankush Singla, Advocate
for the petitioner.

Mr. Aashia Jindal, Advocate for
Mr. Parduman Garg, Advocate
for the respondents.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 04.05.2015 passed by the Civil Judge (Jr. Divn.) Kapurthala and the order dated 02.11.2016 passed by the Addl. District Judge, Kapurthala whereby application under Order 39 Rules 1 and 2 read with Section 151 CPC was dismissed concurrently.

[2]. Brief facts are that the plaintiff filed a suit for declaration to the effect that the plaintiff is owner of the land measuring 0-7 *Marlas* as shown in the plaint being a proprietor of the village.

Permanent injunction was also sought to restrain the defendants from interfering in the possession of the plaintiff over the suit property. It was alleged by the plaintiff that the land measuring 34 *Kanals* 1 *Marla* situated in village Bholath Garbi was the property of the proprietors and was in possession of the proprietors of the village. The plaintiff further alleged that different *khasra* numbers were in possession of the different proprietors. As per revenue record i.e. *jamabandi* for the year 2009-10, Dalip Chand since deceased brother of the plaintiff was in possession of 0-7 Marlas being proprietor of the village. Dalip Chand died on 23.10.2009 and left behind Krishana Khanna (widow), Rajesh Khanna, Prince Khanna, Navyug Raj Khanna (sons), Anju Bala, Manju Bala (daughters) and Roop Rani (mother). Mutation of inheritance of the estate of said Dalip Chand was sanctioned in favour of Krishana Khanna (widow), Rajesh Khanna, Prince Khanna and Navyug Raj Khanna (sons). Prince Khanna also expired after the death of his father intestate and his succession went to his mother Krishana Khanna.

[3]. It was also asserted by the plaintiff that after the death of his brother Dalip Chand, he along with his sons came in possession of 0-7 *Marlas* of land out of 34 *Kanals* 1 *Marla* of land being proprietors/*Mustarka Malkan*. Family of the plaintiff

was owner in possession of vast land in the village. Plaintiff claimed that he was owner of 0-7 *Marlas* of land in the capacity of the proprietor of the village and the land was not capable of vesting in the Nagar Panchayat.

[4]. I have heard learned counsel for the parties.

[5]. Perusal of record revealed that brother of the plaintiff Dalip Chand lost the earlier litigation upto the High Court in RSA No.1570 of 1982. The appeal was decided on 30.07.2003, wherein it was held that in the revenue record i.e. *jamabandi* for the year 1974-75, the land in dispute was recorded as '*Mustarka Malkhana*' in possession of '*Maqbuja Malkana*'. Dalip Chand deceased was not shown in possession of the land in question. No evidence was led by the petitioner to show as to how he came into possession of the land in question exclusively, particularly when Dalip Chand in relation to this land had already lost litigation upto the High Court on the basis of possessory title. No list of proprietors was produced on record, showing respective shares of the proprietors. Above all one civil suit for permanent injunction was also filed by another son of Surinder Khanna i.e. Parbhat Khanna, wherein the Court had already declined the prayer under Order 39 Rules 1 and 2 read with Section 151 CPC. This litigation was related to the same property.

[6]. Under Order 39 Rules 1 and 2 CPC, three principles viz. *prima facie* case, balance of convenience and irreparable loss in the event of not granting interim injunction are to be appreciated on the basis of material on record. The filing of the suit by way of changing the nomenclature of the earlier controversy cannot be appreciated *prima facie* at this stage to hold existence of *prima facie* case in favour of the plaintiff. The possession of the plaintiff through his brother, who had lost litigation upto the High Court cannot be appreciated to hold that the plaintiff has a *prima facie* case and balance of convenience and he would suffer irreparable loss in the event of not granting ad interim injunction in his favour.

[7]. In view of concurrent appreciation of controversy at this stage, I do not wish to interfere in the orders passed by the Courts below in revisional jurisdiction of this Court under Article 227 of the Constitution of India. This revision petition is accordingly dismissed.

September 26, 2017

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No