

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.7755 of 2017

Date of Decision:14.11.2017

Harish Kaur and another

.....Petitioners

V/S

Navdeep Singh

.....Respondent

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

Present: Mr.B.S.Bali, Advocate for the petitioners.

B.S.Walia, J. (Oral)

1. Petitioners have challenged judgment dated 04.09.2017 Annexure P-3 passed by the learned Addl. District Judge, Shaheed Bhagat Singh Nagar, whereby order dated 25.05.2017 Annexure P-2 passed by the learned Addl. Civil Judge(Sr. Div) Shaheed Bhagat Singh Nagar, dismissing the application under Order 39 Rules 1 and 2, CPC was set aside.

2. Brief facts of the case leading to the filing of the instant revision petition are that the respondent-plaintiff filed a civil suit on 27.03.2017 on the ground that he was one of the co-sharers and sought permanent injunction for restraining the petitioners-defendants from taking actual, physical and exclusive possession of a specific portion of the land. Respondent-plaintiff also filed an application under Order 39 Rules 1 and 2, CPC, which was declined by the learned Addl. Civil Judge (Senior Division) SBS Nagar, vide order dated 25.05.2017. Aggrieved, the respondent-plaintiff filed an appeal which as has been noticed above was allowed by the learned Additional District Judge, SBS Nagar, vide order dated 04.09.2017 i.e. Annexure P-3, by taking note of the fact that the defendant/petitioner No.1 Harish Kaur purchased the property on the basis of three sale-deeds executed by the original owners i.e. Mohan Singh, Dhanna Singh and Surjit Kaur, however, it

had not been shown that the original owners were in possession of any specific portion of the land, therefore, their vendee Harish Kaur could not claim ownership or possession over any specific portion and she remained to be a joint owner of the suit land alongwith the appellant.

3. Learned Addl. District Judge, SBS Nagar, while passing the impugned order relied upon the decision of the Hon'ble Supreme Court in **Ram Dass Vs. Sitabal and others, 2009(2) SLJ 1138**, as per which although undivided share of co-sharer could be the subject matter of sale, but possession could not be handed over to the vendee unless the property was partitioned by metes and bounds. Learned Additional District Judge further recorded that admittedly in the case in hand, the suit property had not been partitioned between the co-sharers, therefore, Harish Kaur i.e. defendant/petitioner No.1 could not claim possession over any specific portion of the land on the basis of the sale deeds executed by the original co-sharers. Holding that prima facie case was made out in favour of the respondent-plaintiff who was a co-sharer in the suit property, balance of convenience was also tilted in his favour besides, irreparable loss would be caused to the respondent-plaintiff if the petitioners-defendants were allowed to take possession of any specific portion of the land, the learned Addl. District Judge, reversed the order passed by the learned trial Court, allowed the application under Order 39 Rules 1 and 2 of CPC and restrained the defendants-petitioners from taking actual, physical and exclusive possession of any specific and valuable portion of the suit land and also restrained them from raising any construction thereupon.

4. Learned counsel has reiterated the reasoning given by the learned trial Court while dismissing the application.

5. I have considered the submissions made by learned counsel for the petitioners.

6. A perusal of the decision of the Hon'ble Supreme Court in Ram Dass case (Supra) reveals that in the absence of formal physical partition of an undivided landed property, a co-sharer cannot put a vendee in possession although such a co-sharer may have a right to transfer his undivided share.

7. Relevant extracts i.e. para Nos. 15, 16 and 17 of the aforementioned decision are reproduced hereunder:-

*“15. Without there being any physical formal partition of an undivided landed property, a co-sharer cannot put a vendee in possession although such a co-sharer may have a right to transfer his undivided share. Reliance in this regard may be placed to a decision of this Court in **M.V.S. Manikayala Rao Vs. M. Narasimhaswami & Ors. [AIR 1966 SC 470]**, wherein this Court stated as follows:*

“Now, it is well settled that the purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. His only right is to sue for partition of the property and ask for allotment to him of that which, on partition, might be found to fall to the share of the coparcener whose share he had purchased.”

*16. It may be mentioned herein that the aforesaid findings and the conclusions were recorded by the Supreme Court by placing reliance upon an earlier judgment of this Court in **Sidheshwar Mukherjee Vs. Bhubneshwar Prasad Narain Singh & Ors. [AIR 1953 SC 487]**, wherein this Court held as under:-*

*“All that (vendee) purchased at the execution sale, was the undivided interest of co-parcener in the joint property. He did not acquire title to any defined share in the property and was not entitled to joint possession from the date of his purchase. He could work-out his rights only by a suit for partition and **his right to possession** would date from the period when a specific **allotment was made in his** favour (Emphasis added).*

17. In view of the aforesaid position there could be no dispute with regard to the fact that an undivided share of co-sharer may be a subject matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement or by a decree of the Court.”

8. In the light of the decision of the Hon'ble Supreme Court in the case of Ram Dass case(Supra), no case is made out warranting interference with the well reasoned judgment passed by the learned Addl. District Judge.
9. Finding no merit in the revision petition, the same is dismissed in limine.

(B.S.WALIA)
JUDGE

14.11.2017
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No