

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

CR no.3441 of 2018

Date of Decision: 21.11.2018

Hari Singh

...Petitioner

Vs.

Margaret Alice Skinner and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. S.K. Aggarwal, Advocate,
for the petitioners.
Mr. Arun Jain, Sr. Advocate, with
Mr. Dhruv Mittal, Advocate
for the respondents.

Amol Rattan Singh, J (Oral)

The petitioner has challenged the order of the learned trial court dated 17.04.2018 (Annexure P-1), by which the interim injunction granted in his favour (she being the plaintiff), has been set aside and the application filed under Order 39 Rules 1 and 2 of the CPC, by the petitioner, has been dismissed.

The trial Court vide its order dated 05.08.2017 (Annexure P-5), *prima facie* found that the plaintiff-petitioner had purchased the suit property by a registered sale deed dated 09.10.2014, and further, that in a civil suit titled as Durga Devi v. Dayanand etc., filed by Durga Devi against the predecessors-in-interest of the respondents herein (copy Annexure P-6), a compromise had been entered into between the parties.

Learned counsel therefore has pointed to the fact that in terms

of the decree in Durga Devis' case (in the case where the respondents herein were the defendants, i.e. Civil Suit no.682 of 1987, decided on 30.01.1988), a site plan was annexed, showing therein *rastas*/paths existing on *Khasra* nos.367, 368 and 369, which in turn are shown to be a part of *Khasra* no.1037 (since there cannot be two *khasra* numbering covering the same area of land, obviously, there is a “division line” missed to be shown, though for the purpose of this petition that is not material).

Thus, the contention is that the entire land owned by the respondents /their predecessors-in-interest having been shown to be containing *rastas*, with no other land left in *Khasra* no.1037, other than the said *rastas*, alienating such *rastas* would prejudice the rights of the petitioner-plaintiff.

In fact that is what the trial court has also observed while granting an interim injunction in favour of the petitioner-plaintiff.

The appellate court, while reversing that order, has held that the said *rastas*/passages were not shown in any revenue entry and that it was only an oral allegation of the plaintiff (respondent no.1 before the appellate court) that the defendants were intending to sell the passages.

It has also been observed by the appellate court that even as per the case of the plaintiff, he had only purchased a share in the suit property vide the aforesaid sale deed dated 09.10.2014.

Hence, observing as above, the order of the learned trial court was set aside and the application filed under Order 39 Rules 1 and 2 CPC

has been dismissed vide the impugned order.

Having considered the matter, what this Court cannot ignore is that a decree was suffered (even if by consent) by the respondents, with Durga Devi, in which the aforesaid mentioned *rastas*/passages are shown to be contained in *Khasra* nos.367, 368 and 369.

Thus, even if the respondents cannot be restrained from alienating their shares in any such suit property, in my opinion, during the pendency of the suit, the plaintiff is entitled at least to an injunction to the effect that the nature of the property as contained in the *khasra* nos. shown to be as *rastas*, should not be altered.

Consequently, this petition is partly allowed. The impugned order is set aside and that of the trial court is restored to the above extent, i.e. that though the respondents would be entitled to sell their respective shares in the suit property, all passages shown as *Khasra* nos.367, 368, 369, 370 etc. shall not be altered to any other use during the pendency of the suit.

Needless to say, the suit be decided expeditiously by the trial court.

Naturally, nothing stated herein above will be taken as an observation of this Court on the merits of the case for or against either of the parties, which would be looked at by the trial court wholly on the basis of the evidence led before it.

21.11.2018

vcgarg

(Amol Rattan Singh)

Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes