

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-4472-2017 (O&M)

Date of decision: 12.01.2018

Madan and others

..... Petitioners

Versus

Sammat @ Sampat and another

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Sandeep Kotla, Advocate for the petitioner.

RAMENDRA JAIN, J. (ORAL)

1. Through the instant revision challenge has been laid to the order dated 28.04.2017 (Annexure P-1) of the trial Court, whereby the application of the petitioners-defendant under Order 10 CPC was dismissed.

2. Put pithily, respondent No. 1/plaintiff-Sammat @ Sampat and the petitioners-defendant, are co-sharers in the suit land qua which partition proceedings were initiated and decided by the Assistant Collector Grade-II, Hansi, thereby land measuring 8 kanals 10 marlas comprising in Khasra No. 181//19/2 (7-10), 22//1/3 (1-0) forming part of total land measuring 121 kanals 02 marlas bearing khewat No. 80, Khatauni No. 132-134, according to Jamabandi for the year 2007-08, was allotted to respondent No. 1-plaintiff.

3. Being aggrieved, the petitioners-defendant preferred an appeal before the Collector, Hisar, which resulted into dismissal.

4. The revision of the petitioners-defendant before the Financial Commissioner (Revenue), Haryana, was pending.

5. Simultaneously, the petitioners-defendant challenged the said

partition proceedings in Civil Court by filing a suit for declaration. During its pendency, respondent No. 1-plaintiff, also filed a suit for possession against the petitioners-defendant on the ground that though the partition order amongst them had already been implemented at the spot, but the petitioners-defendant being head strong persons illegally and wrongly dispossessed him.

6. Upon notice, the petitioners-defendant appeared and moved an application under Order 10 CPC for stay of the suit for possession of respondent No. 1-plaintiff, on the ground of pendency of their suit for declaration, prior to this suit which the trial Court has dismissed vide impugned order Annexure P-1.

7. Learned counsel for the petitioners-defendant *inter alia* contends that the claim of respondent No. 1-plaintiff in his suit for possession is based on falsehood, because the partition proceedings had not yet been finalized as revision against the same was still pending before the Financial Commissioner (Revenue), Haryana. The order of the Assistant Collector Grade-II, Hansi, was never implemented at the spot, therefore, the question of delivering of possession qua specific khasra number mentioned in the plaint filed by respondent No. 1-plaintiff does not arise at all. The trial Court erred in not staying subsequent suit on the same cause of action and for the same subject matter, for which the suit for declaration filed by the petitioners-defendant was already pending.

8. Having given anxious consideration to the submissions made by learned counsel for the petitioners-defendant, this Court finds that instant revision is completely devoid of any merit for the reasons to follow:

9. Pendency of a revision against partition order passed by the

Assistant Collector, Hansi, against which appeal filed by the petitioners-defendant has also been dismissed, by any stretch of imagination, cannot be termed as pendency of partition proceedings, more particularly when mutation in the revenue record has already been sanctioned on the basis of partition order which in itself is sufficient to show that the partition order amongst the parties has already been implemented at the spot.

10. There is a categoric stand of respondent No. 1-plaintiff in his suit for possession that after implementation of the partition order passed by the Revenue Authorities and sanctioning of mutation, the petitioners-defendant being head strong persons ousted him illegally and forcibly from his part of land on which he was put in possession in accordance with the partition order, which had attained finality, after dismissal of the appeal filed by the petitioners-defendant.

11. Therefore, in the considered opinion of this Court, the suit for possession on different cause of action filed by respondent No. 1-plaintiff, has not rightly been stayed by the trial Court and the application under Order 10 CPC has rightly been dismissed by it.

12. I have carefully gone through the impugned order Annexure P-1 and find no illegality or paucity in the same. The instant revision being completely devoid of any merit is dismissed.

13. A copy of this order be sent to the trial Court for record.

January 12, 2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No