

In the High Court of Punjab and Haryana at Chandigarh

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Civil Revision No.5123 of 2017

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Date of decision:18.5.2018

Piar Kaur

.....Petitioner

v.

Jaspreet Singh

.....Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mrs. Rupinder Kaur Thind, Advocate for the petitioner.

Mr. R.K. Arya, Advocate for the respondent.

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Inderjit Singh, J.

This civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 3.4.2017 (Annexure-P.4) passed by the learned Additional District Judge, Amritsar, whereby appellate Court partly accepted the appeal of respondent No.1 by setting aside the well reasoned order dated 14.3.2016 (Annexure-P.2) passed by learned Additional Civil Judge (Senior Division), Ajnala.

Notice of motion was issued in this case.

Mr. R.K. Arya, learned Advocate has put in appearance on behalf of the respondent and contested this civil revision petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that Piar Kaur-plaintiff filed suit for

permanent injunction restraining the defendants, their agents from interfering into the peaceful possession of the plaintiff, and from dispossessing the plaintiff forcibly, illegally, without following any due process of law from the land measuring 11 Kanals 3 Marlas out of the land bearing Khasra No.47 Min, as fully detailed in the head note of the plaint. Along with the suit, an application under Order 39 Rules 1 and 2 read with Section 151 CPC was also filed by the plaintiff in which it has been stated that land measuring 11 Kanals 3 Marlas out of land bearing Khasra No.47 Min, as fully detailed in the head note of the plaint and in the Jamabandi and Khasra Girdwari was in the name of Hazara Singh husband of the plaintiff as a tenant under the original owner from the last many years and the plaintiff is in exclusive possession over the suit land. The plaintiff had sown paddy crop in the suit land. It has been further alleged that Hazara Singh has since died and he executed a registered Will dated 24.3.2003 in favour the plaintiff. She further stated that the defendants are threatening to dispossess her forcibly and illegally.

In the written statement filed before the lower Court, the defendants stated that they are in cultivating possession over the suit property being lessee. Previously, the suit land was under the possession of Hazara Singh son of Fateh Singh being lessee and presently the defendants have taken the suit property from the Wakf Board on lease which is measuring 10 Kanals out of 15 Kanals 8 Marlas and is under possession of defendant No.1 and land measuring 4 Kanals is under possession of defendant No.2.

The learned Additional Civil Judge (Senior Division), Ajnala,

after discussing the documents on record and the pleadings of the parties found that the plaintiff placed on record copy of Jamabandi for the year 2011-12 and copy of Khasra Girdawari from Sauni 2012 to Harri 2015 and photo copy of registered Will executed by deceased Hazara Singh in favour of his wife Piar Kaur.

On the other hand, the defendants had placed on record a letter written by Punjab Wakf Board, Chandigarh to the Estate Officer, Punjab Wakf Board, Amritsar dated 17.4.2015 regarding permission to recover the amount in respect of Waqf land area measuring 10 Kanals out of 15 Kanals 8 Marlas in Khasra No.47Min. attached with graveyard situated at Village Chak Aulakh, Tehsil Ajnala, District Amritsar, but the defendants had not placed on record any document showing that the suit land has been leased out by the Punjab Wakf Board in favour of the defendants nor any document in the shape of revenue record has been placed by the defendants on record to show that possession of the suit land has been changed in their names. By discussing these documents, the learned Additional Civil Judge (Senior Division), Ajnala, accepted the application and the defendants were restrained from interfering into the peaceful possession of the plaintiff over the suit land and also restraining them from dispossessing the plaintiff from the suit property till the disposal of the present suit except in due course of law. Aggrieved from this order, Jaspreet Singh filed an appeal before the District Judge, Amritsar, which was partly accepted by the learned Additional District Judge, Amritsar, vide order dated 3.4.2017. The parties were directed to maintain status quo with regard to the suit property.

This order dated 3.4.2017 passed by the learned Additional

District Judge, Amritsar, has been challenged in the present civil revision petition.

From the record, I find that after hearing learned counsel for the parties and as per revenue record the defendants are not in possession over the suit property. Rather, husband of the plaintiff, namely Hazara Singh is shown in possession over the suit land as per the Jamabandi and Khasra Girdawari. There is nothing on the record as to when the possession was taken from Hazara Singh and Piar Kaur by the defendants or by the Wakf Board. Even if it is taken that the land was allotted to the defendants in the open auction even then the defendants have to show the actual possession over the suit land and since when they have come in the actual possession and when the possession was taken from Piar Kaur etc.

At this stage, the Court is to see the *prima facie* case and balance of convenience and irreparable loss. From the revenue record as well as from the admission of the defendants that Hazara Singh was earlier in possession of the suit land and there being no document on record to show as to when the possession from Hazara Singh or his legal heir Piar Kaur was taken or dispossessed from the suit land a *prima facie* case is made out in favour of the plaintiff. Balance of convenience also lies in her favour and in case the defendants succeeded in dispossessing the plaintiff from the suit property, then the plaintiff will suffer irreparable loss.

Therefore, from the above discussion, I find that the order dated 14.3.2016 passed by the learned Additional Civil Judge (Senior Division), Ajnala, is correct as per law and the same is upheld. The order passed by the learned Additional District Judge, Amritsar, asking the parties to

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maintain status quo regarding possession is not as per law. The learned first appellate Court has wrongly interfered in the discretion exercised by the learned Additional Civil Judge (Senior Division), Ajnala.

Hence, from the above, finding merit in the present civil revision petition, the same is allowed and the impugned order dated 3.4.2017 passed by the learned Additional District Judge, Amritsar is set aside and the order passed by the learned Additional Civil Judge (Senior Division), Ajnala, is upheld.

May 18, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No