

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

Civil Revision No.5311 of 2017 (O&M)

Date of decision: May 22, 2018

Mukul Garg and others

...Petitioners

Versus

Market Committee, Samana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rakesh Gupta, Advocate
for the petitioners.

Mr.Kulwant Singh Boparai, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioners have filed this revision petition against respondent Market Committee Samana under Article 227 of the Constitution of India for setting aside order dated 28.04.2016 passed by learned Civil Judge (Junior Division), Samana, vide which status quo was ordered and appeal against that order was also dismissed by learned Addl. District Judge, Patiala, vide judgment dated 28.02.2017.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

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

From the record, I find that plaintiff Market Committee Samana

filed a suit against Mukul Garg and other defendants for permanent

injunction restraining the defendants, their agents and attorneys from interfering in or causing to interfere in or dispossessing the plaintiff from or taking forcible possession of the property under possession of the plaintiff measuring 440.80 sq. yards area, shown in blue colour in the site plan. Along with the suit, an application under Order 39 Rule 1 and 2 read with Section 151 CPC was filed.

The brief case of the applicant-plaintiff as noted down by learned Civil Judge (Jr. Divn.), Samana, in his order dated 28.04.2016 are as under:-

“2. Brief facts of the case of the applicant as alleged are that the applicant has purchased land comprised in khasra no.1340/161(3-3) i.e. 3 Bighas 3 Bishvas of village Malkana, Tehsil Samana from Ladha Singh vide registered sale deed Vasika no.110 dated 20.03.1956 for a sum of Rs.787.50 paisa and entered into its possession as owner. Mutation no.296, on the basis of aforesaid sale deed, has also been duly sanctioned in favour of the applicant. The applicant has also purchased land comprised in khasra no.1353/171(2-17) i.e. 2 Bighas 17 Bishvas of village Malkana, Tehsil Samana from Mangal Singh vide registered sale deed Vasika no.119 dated 23.03.1956 for a sum of Rs.712.50 paisa and entered into its possession as owner. Mutation no.297, on the basis of aforesaid sale deed, has also been duly sanctioned in favour of the applicant. The applicant has always continued in actual, physical possession of the suit property purchased by it and construction of Market Committee Building was duly raised long back in the year 1960. In the meantime, the consolidation of the land was undertaken in the area and in lieu of the land purchased and mutated in favour of the applicant, it was given land in khasra no.271(5-6) and 274(4-15) and separate khata stood awarded to the applicant on the basis of the mutation of consolidation duly acted upon in the revenue record and jamabandi for the year 1960-61 against Khewat No.202 Khatauni No.276 Khasra No.271(5-6) 274(4-15) of village Malkana duly recorded the applicant to be exclusive owner in possession of the same. The aforesaid entire area of 10 kanal 1 marla at that time already continued in actual, physical possession of the applicant and has been under its actual use for the purpose of its office and other allied purposes. After the establishment of New Office of Market Committee Samana in the year 2008

in the area of New Grain Market, Bhawanigarh Road Samana, the aforesaid old building of the applicant being situated on Patiala-Hissar State Highway No.10 became vacant. The old building premises of the applicant's office was resolved to be sold by the applicant in the year 2009 and its entire area was got measured and ascertained through Executive Engineer (Civil), Patiala and plan of the existing building was prepared. During the process of offering the said building premises for sale, it revealed that at the spot the applicant was in possession of 5159.81 square yards in the said old Market Committee Building. However, it is revealed that due to mistake by the Revenue Officer, the area of 4719 square yards equal 7 kanal 16 marlas only now stood entered to be ownership of the applicant. As the process for correction of the revenue record was to take a long time for which the Revenue Department was being approached, the applicant yet decided to sell only a part of the said area keeping intact its ownership and possession qua remaining 440.81 square yards area which has been continuing in its actual and physical possession for the more than 55 years. Ultimately in the said site plan prepared for the entire area included in the Old Market Committee Samana Office Premises Patiala-Hissar Road and an area of 39'-8" x 100' north-west corner of the premises was declared reserved not to be offered for sale alongwith other 263.26 square yards kept reserved not to be offered for sale being in south-western corner of the entire property. As such, only an area of 4455.74 square yards was offered for sale but aforesaid area of 440.81 square yards and 263.26 square yards was never offered for sale. The auction for the aforesaid area of 4455.74 square yards was actually held on 14.09.2010 and M/s. H.R. Developers & Promoters Pvt. Ltd. Patiala was a successful bidder and possession of the suit property as sold on "as is where is basis" i.e. the property with front of 157.10 yards on Patiala-Patran Road only was later on duly delivered to the successful bidder i.e. M/s. H.R. Developers & Promoters Pvt. Ltd. Patiala and delivery of possession so made was duly taken by the purchaser/allottee against written receipt dated 03.02.2011. As such, the possession of the suit property measuring 440.81 square yards still remained with the applicant and the respondents have no right, title or concern with the same and none of the respondents have ever entered into possession of any part of the suit property on any occasion whatsoever. The suit property is in actual and physical possession of the applicant and to protect it from illegal interference of third person, the applicant got constructed boundary wall of the said plot measuring 440.81 square yards by spending huge amount. The respondents, in order to cause wrongful loss to the applicant and in order to grab the suit property, are bent upon to interfere in the

possession of the applicant and are trying to dispossess the applicant and are also trying to take forcible possession of the suit property measuring 39'-8" x 100' i.e. 440.80, to which they have no right. Hence, the present application."

The defendants appeared and case of the defendants as noted down in the order dated 28.04.2016 is as under:-

"3. Upon notice, respondents have contested the case of applicants on the grounds that the applicant was not owner in possession of the suit property. Rather from the copy of jamabandi attached by the applicant alongwith the plaint, it is clear that mutation of the land measuring 2 kanal 5 marlas was sanctioned in favour of Dial Chand son of Nathu Ram and endorsement regarding the same had been entered in the said jamabandi. It is further submitted that as per Mutation No.545 of Malkana, the land measuring 2 kanal 5 marlas as stated above was already sold by Smt.Gurmeet Kaur to some Dial Chand and mutation regarding the same was entered and sanctioned later on. The land was also separated and a Tatima was also prepared at the time of sanctioning of the said mutation in favour of Dial Chand out of Khasra No.271 and 274 on the backside of the mutation sheet. In the Tatima, it is clearly shown that the land measuring 2 kanal 5 marla out of khasra no.271 and 274 was given towards southern side of the area of Khasra No.271 and 274 as described in the Tatima in mutation No.545 of Malkana. It is clear that the applicant was owner to the extent of 7 kanal 17 marla of land, although it might have purchased some more land as alleged and the said land measuring 2 kanal 5 marlas which the applicant claims to be wrongly entered in the name of Dial Chand is situated on the southern side of the said khasra no.271 and 274 as shown in the Tatima. The applicant never challenged the said revenue record since the year 1965. The site plan attached with the plaint is forged and fabricated document. The applicant itself got demarcated the property which it sold after giving the advertisement and in the said demarcation report, it is held that the applicant was not in possession of the land measuring 3 kanal 10 marlas out of khasra no.274 and actually the applicant was in possession of the land measuring 2 kanal 1 marlas out of khasra no.274 and as such, the applicant delivered the possession to respondents to the extent of 1 kanal 9 marla less than it sold in khasra No.271 and 274. It was held in the demarcation report that the applicant is not owner of any land on the spot except the land 0-8-2/3 marlas at the spot where the statue of Sh.Sant Ram Singla has been erected. So, the applicant has cheated the respondents by giving possession of less land out of the land sold to them. It is

further submitted that the plot in dispute falls in khasra no.271 which is clear from the Latha as well as from the Tatima of mutation no.545 in favour of Dial Chand. The respondents are owners in possession of the plot in question, as such, the question of taking forcible possession of the same does not arise at all. Denying other averments of plaint, prayer for dismissal of application has been made.”

Replication to the written statement was filed, wherein it is mainly stated as under as mentioned in the impugned order:-

“4. Replication to the written statement has been filed in which it has been submitted that the mutation no.545 is illegal and wrong and no such alleged mutation could be sanctioned with respect to the ownership property of the applicant for the year 1960-61 due to the simple reason that the applicant never sold the property to Dial Chand in whose favour the alleged mutation no.545 of Malkana was sanctioned illegally and wrongfully. As a matter of fact that the total area of suit khasra no.271 has been 5 kanal 6 marlas and that of khasra no.274 has been 4 kanal 15 marlas as fully shown in the jamabandi for the year 1960-61 and there was no basis for bifurcation of area of the suit khasra numbers or creation of min khasra no.271/1(1-0) and khasra no.274/1(1-15) and as such, the suit area certainly is part of the ownership khasra numbers of the applicant i.e. 271 (5-6) and 274(4-15). However, the matter in controversy pertains to specific area of 440.80 square yards as fully shown in the site plan which was never sold to the respondents or anybody else and possession of which was never given by the applicant either to any of the respondents or to anybody else. The respondents cannot take benefit of the alleged wrongful revenue record or the mutation no.545 to set up any claim to the suit property with which the respondents have no right, title or concern. The respondents have taken self contradictory pleas even as on one hand they are referring to alleged ownership claim of Dial Chand qua the suit property and on the other hand, they are falsely claiming that they have purchased the suit property. Said Dial Chand purportedly purchased land out of old khasra no.1353/171 from Gurmeet Kaur then minor daughter of Mangal Singh and as such, the question of taking away area to the extent of 2 kanal 15 marlas of total entitlement of the applicant i.e. 10 kanal 1 marla never arose. Although land of no other khasra number except 1353/171 was covered by the sale deed vasika no.78 dated 27.02.1961, the alleged mutation no.545 illegally and wrongfully shown as transferred the land of old khasra no.1353/177(1-9) by further referring the area of new khasra no.274/1 to the

extent of 1 kanal 5 marlas and that of 271/1 to the extent of 1 kanal 0 marla which actually belong to the applicant having been awarded during consolidation to the applicant against their ownership of old khasra no.1340/161 qua new khasra no.271(5-6) and 1352/ 171/2 qua new khasra no.274(4-15). The area of suit khasra no.271/1 and 274/ 1 has never been transferred to Sh.Dayal Chand, predecessor in interest of the defendant no. I , so as to confer any ownership right upon Dayal Chand or through him upon any other person who allegedly has stepped into the shoes of late Sh.Dayal Chand. All other allegations of the written statement have been denied and a prayer for allowing the application has been made.”

Learned Civil Judge (Jr. Divn.), Samana, after discussing the facts of the case held that plaintiff-applicant is claiming itself to be owner in possession of the suit property whereas the respondents are claiming themselves to be owners in possession of the suit property. The fact regarding ownership and possession is to be determined on the basis of evidence. Since both the parties are claiming possession of the suit property, therefore, learned Civil Judge ordered the parties to maintain status quo in order to preserve the property from being damaged and wasted. Aggrieved from this order, an appeal was filed and learned Addl. District Judge, Patiala, vide impugned judgment dated 28.02.2017, dismissed the appeal.

Aggrieved from above-said order and judgment, present revision petition has been filed by the petitioners-defendants.

From the record, I find that the dispute between the parties is regarding the area of 440.81 sq. yards. The case of the plaintiff is that they have not auctioned this area whereas the case of the defendants, who are the auction purchasers, is that this area is included in the area purchased by them in the auction and possession has also been delivered of this area in

question. Both the parties are on dispute regarding ownership as well as possession over the property in dispute. All these facts regarding auctioning and delivery of possession of this area, is to be proved by the parties by bringing the evidence on record. At this stage, to preserve the property and to keep the property intact, so that its nature may not get changed and dispute regarding possession is also to be determined on the basis of evidence, therefore, learned Civil Judge (Jr. Divn.), Samana, in the impugned order dated 27.05.2016, has correctly directed the parties to maintain status quo regarding the suit property.

In view of the above discussion, I find that the findings given by both the Courts below are correct. No illegality has been committed by lower Courts nor evidence has been misread. In no way, the findings can be held as perverse or against the evidence. Therefore, the impugned order dated 28.04.2016 passed by learned Civil Judge (Junior Division), Samana and judgment dated 28.02.2017 passed by learned Addl. District Judge, Patiala, are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

However, keeping in view the facts and circumstances of the present case, learned lower Court is directed to decide the case expeditiously by giving short adjournments and if possible, preferably within one year from the date of receipt of copy of this order.

May 22, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No