

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.558 of 2018

Date of Decision.25.01.2018

Gursant Singh

.....Petitioner

Vs

Manju Rani and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Lather, Advocate
for the petitioner.

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AMIT RAWAL J.(ORAL)

The petitioner-defendant No.2 is in revision petition against the order dated 2.11.2017 whereby the application to place on record documentary evidence i.e. mutation No.4683 and jamabandi for the relevant year by way of additional evidence has been rejected.

Mr. Lather, learned counsel appearing on behalf of the petitioner submits that respondent Nos.1 to 3/plaintiffs instituted suit claiming injunction restraining the defendant from interfering into the peaceful possession in respect of land measuring 13 kanals 8 marlas 5 sarsai as described herein below:-

“(i) 1/6th share of land measuring 8 kanal 7 marlas corresponding to 1 kanal 7 marlas 7 sarsai comprised in Khewat No.143 Khata No.164.

(ii) 1/6th share of land measuring 24 kanal 13 marlas corresponding to 4 kanal 2 marlas 1 sarsai comprised in Khewat No.285 Khata No.322.

(iii) 158/1797 share of land measuring 59 kanal 18 marlas corresponding to 5 kanal 5 marlas 3 sarsai comprised in Khewat No.321 Khata no.383 to 385.

(iv) 80/2163 share of land measuring 72 kanal 2 marlas corresponding to 2 kanal 13 marlas 3 sarsai comprised in Khewat No.325 Khata No.389.”

There was categoric stand in the written statement that the plaintiffs are not in possession, much less, owner of the property. It was Charanjit Kaur, mother of Gursant Kaur, who was owner in possession of the property. Charanjit Kaur, unfortunately died on 11.05.2015 but before that executed a registered Will dated 17.01.2014.

In view of the aforementioned fact, an application for amendment of the written statement was moved which was allowed by the trial Court vide order dated 5.11.2015 (Annexure P-4). Amended written statement was filed. In para 10 of the amended written statement, the factum of execution of the Will was mentioned. Evidence of the defendant was closed vide order dated 02.08.2017. However, the property was not being mutated in favour of the successor-in-interest i.e. beneficiary was required to establish the ownership and possession. All these facts were not noticed by the Court below, thus, there is illegality and perversity.

I have heard learned counsel for the petitioner and appraised the paper book. The nature of suit as noticed above is simplicitor of permanent injunction and not for title yet the petitioner-defendant has attempted to prove the title though, prima facie, the respondent-plaintiff is seeking injunction with regard to khewat number, which was in the name of Charanjit Kaur and mutation had also been effected in favour of Charanjit Kaur. If fresh mutation is not placed on record and the jamabandi in the name of Charanjit Kaur had

already been brought on record, it would enable the trial Court to adjudicate upon the *lis* with regard to simplicitor suit for injunction, as title is not involved.

In view of the aforementioned observation, while upholding the order under challenge, the revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

January 25, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No