

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

**CR No.8730 of 2015
Date of decision:03.04.2018**

Gurpreet Singh and others ... Petitioners

Vs.

Raghubir Singh Pindi and another ... Respondents

COCP No.625 of 2016

Gurpreet Singh and others ... Petitioners

Vs.

Raghubir Singh Pindi and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. H.P.S.Ghuman, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of one revision petition bearing No.8730 of 2015 and another COCP bearing No.625 of 2016.

The present revision petition is directed against the impugned order dated 20.10.2015 (Annexure P-6) passed by the District Judge, Patiala, whereby, the appeal filed against the order dated 19.08.2014 (Annexure P-3) rendered by the Civil Judge (Junior Division), Nabha dismissing the application under Order 39 Rules 1 and 2 CPC, was

dismissed.

The petitioner-plaintiffs instituted the suit (Annexure P-1) for permanent injunction restraining the defendants from illegally and forcibly, causing any type of interference into the peaceful possession of plaintiffs over the land/plot bounded by one side:property of G.S.K. Limited, Nabha, second side: Gurudwara Tibbi Sahib, third side : road and fourth side : passage/street and out of land represented by khewat no.1222, khatauni no.2017, khasra nos.130/1(1-13), 131/2 (1-15), 20//23 (6-16) situated in the area of Nabha as per jamabandi for the year 1995-96, with a further prayer restraining the defendants from dispossessing the plaintiffs on the premise that plaintiffs were/are owners in possession of land aforementioned and constructed a boundary wall around the above said plot about 5 years ago and a room was also constructed in the suit property. The plaintiffs about one month back decided to put RCC Lintel on already constructed room inside the boundary of the said plot but the defendants tried to create obstructions in the said construction work and also threatened to the labour who was employed by the plaintiffs. On 29.03.2012, the matter was referred to the local authorities but no action was taken, necessitating the petitioner-plaintiffs to knock the door of the Court under Section 9 CPC. Alongwith suit, ad interim application was filed apprehending that in case ad interim injunction was not granted, suit would be rendered infructuous.

The defendants appeared and filed written statement by contesting the description of the property and dimensions as well. It was averred that the plaintiffs were not in possession of any part of the suit

property, whereas, possession was of Gurudwara Tibbi Sahib as per the site plan produced by the defendants alongwith written statement. The plaintiffs wrongly mentioned the area of khasra no.130/1[1-13] but the actual area of said khasra number is 1-3. The plaintiffs have already sold the area measuring 5-17 out of the khasra number in dispute. After selling the land, GSK Limited constructed the wall between the property in possession of Gurudwara Sahib and their property reflected in the site plan. The property shown in green colour in the site plan was being used by Gurudwara Sahib, therefore, there was no land in possession of the plaintiffs and prayed for dismissal of the suit alongwith application filed under Order 39 Rules 1 and 2 CPC.

The trial Court, vide order dated 19.08.2014 on the basis of documentary evidence placed on record declined to grant the injunction on the ground that though the plaintiffs had mentioned the boundaries of the property in dispute and placed on record the copy of khasra girdawari but yet held to have sold the some portion of land to GSK Limited, much less not able to prove the possession. The appeal preferred before the Lower Appellate Court was also dismissed.

However, during the pendency of appeal, Lower Appellate Court called upon Patwari as a Court witness for the purpose of adjudication of miscellaneous appeal to ascertain the status of land and found that it was *gair mumkin* land, therefore, injunction could not be granted.

Mr. Rakesh Gupta, learned counsel appearing on behalf of the petitioner-plaintiffs submitted that both the Courts below have committed

illegality and perversity, particularly the Lower Appellate Court, for, the statement dated 05.10.2015 of Patwari was not read in correct perspective, wherein, he has categorically stated that as per the revenue record (Ex.CW4/D) with regard to khasra no.130/1 and as per the jamabandi for the year 1995-96, possession was of Gurpreet Singh. A specific stand in this regard has also been taken in the grounds of revision petition. He has also drawn the attention of this Court to Annexure P-8, i.e., jamabandi for the year 1995-96 and khasra girdawari to show the possession of Lal Singh, father of the petitioners. The respondents were not co-sharers and therefore, Lower Appellate Court could not have denied the injunction. The findings of the Lower Appellate Court are liable to be set aside.

He has also drawn the attention of the Court to the order dated 22.12.2015 while noticing the contention of learned counsel for the petitioner, this Court had granted the status quo order. The status quo order is continuing. The suit is slated for plaintiffs' evidence and shall endeavour to conclude the evidence as early as possible or on any terms and conditions this Court deem fit but plaintiffs have been able to bring the case within the parameters of Order 39 Rules 1 and 2 CPC, i.e., prima facie case, balance of convenience and irreparable loss.

It was contended that in case, the respondents were successful in demolishing the wall despite status quo order which necessitating filing of COCP No.625 of 2016.

Mr. H.P.S.Ghuman, learned counsel for the respondent-defendants submitted that finding of the Lower Appellate Court in

paragraph 10 of order is perfectly legal and justified and is in consonance with the revenue record. The revenue record showed that plaintiffs alongwith other co-sharers were in possession of the suit property but the plaintiffs were not in exclusive possession, therefore, rightly so they could not have been granted the injunction. As per the site plan, it is Tibbi Gurudawar Sahib which was in possession of the property, therefore, rightly so injunction had been declined. He further submitted that under the garb of status quo order, the suit had not been proceeded further and prayed for dismissal of the revision petition.

As regards contempt petition, he denied that said wall was demolished by Gurudawara Sahib but it was voluntary act of the plaintiffs to put pressure tactics and urged this Court for dismissal of the petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Gupta, for, jamabandi Ex. P8 and khasra girdawari Ex.P10 revealed the possession of Lal Singh, father of petitioners. The Lower Appellate Court, in my view, exceeded its jurisdiction in giving a finding on merit of the matter with regard to the property being converted into gair mumkin or plot. This is not the scope for deciding the miscellaneous appeal preferred against the interim order. The Court was called upon to ponder upon whether the plaintiffs had been able to bring the case within the parameters of Order 39 Rules 1 and 2 CPC. Though the Lower Appellate Court found that the plaintiffs were in possession but despite that did not grant the injunction. It is settled law that a co-sharer cannot seek injunction against

another co-sharer but if in exclusive possession then “yes”. The aforementioned view of mine is supported by the Full Bench judgment rendered by this Court in **Bhartu vs. Ram Sarup 1981 PLJ 204** and reiterated by the Hon'ble Division Bench of this Court in **Bachan Singh vs. Swaran Singh 2000 (3) RCR Civil 70, 2001**. Had the status of the defendants been of co-sharers, perhaps the plaintiffs did not have any case to seek injunction but remedy was to seek partition. The contention of Mr. Ghuman, has not been able to cut ice, for, an adjudication of the interim application, the status of the defendants being co-shares has not been proved on record as no documentary evidence was placed on record before the Court below except site plan which would be subject matter of evidence.

I am of the view that plaintiffs have been able to bring the case within the provisions of Order 39 Rules 1 and 2 CPC. Since this Court, vide order dated 22.12.2015 had already granted status quo which reads as under:

“Learned counsel for the petitioners *inter alia* contends that the finding given by the Lower Appellate Court in the order dated 20.10.2015 that the injunction cannot be issued against the co-sharer who is not in exclusive possession of the property is factually incorrect. The land in dispute has been inherited by the plaintiff along with their brother, namely, Sher Singh and the injunction has been sought against the stranger and not against the co-sharer. He has referred to the Jamabandi (Annexure P-8) in which the area in Column No.8 has been

prescribed as a plot and the possession is of the plaintiffs when Mutation No.18306 was sanctioned after the death of Smt. Tej Kaur.

Notice of motion for 15.03.2016.

Status quo be maintained, in the meantime.”

I deem it appropriate to issue direction to the trial Court to decide the suit by affording 4-4 effective opportunities to each of the parties as expeditiously as possible preferably within a period of one year from the date of receipt of certified copy of this order. It is made clear that the trial Court shall take appropriate action in case any of the parties found to be adopting delaying tactics. The impugned order is set aside. The status quo order granted vide order dated 22.12.2005 is made absolute till decision of the suit. Anything observed herein above shall not be construed as an expression of opinion on the merits of the suit.

Resultantly, the revision petition as well as contempt petition stand disposed of.

(AMIT RAWAL)
JUDGE

April 03, 2018

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No