

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.8953 of 2017

Date of Decision: 16.10.2018

Ramesh Kumar and another

...Petitioners

Vs.

Deepthi Arora and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sumeet Mahajan, Senior Advocate, with
Mr. Amit Kohar, Advocate,
for the petitioners.

Mr. Vikas Bahl, Senior Advocate, with
Ms. Japneet Kaur, Advocate,
for the respondents.

Amol Rattan Singh, J.

By this petition, the petitioners, who are the plaintiffs in the suit out of which the impugned order arises, challenge the said order dated 18.11.2017 (copy annexed as Annexure P-13), passed by the learned Additional District Judge, Ludhiana, allowing the appeal of the respondents-defendants against an order passed by the learned trial Court (Civil Judge (Junior Division), Ludhiana), dated 21.09.2017 (Annexure P-12), by which order the trial Court had allowed the application of the petitioners-plaintiffs, seeking an *interim* injunction during the pendency of the suit.

In the suit of the petitioners, they were seeking a decree of permanent injunction against the respondents-defendants against trespassing on the suit property, which is stated to be a godown, which the petitioners' claim is in their ownership and of which they are in possession.

It is necessary to notice at the outset that the first petitioner is the

HUF of Ramesh Kumar, with the second petitioner-plaintiff being the wife of Ramesh Kumar, whereas the respondents-defendants are the wife and children of the late brother of the aforesaid Ramesh Kumar. Thus, it is a dispute within the family, qua the suit property.

2. In the application filed under Order 39 Rules 1 and 2 of the Code of Civil Procedure, the petitioners had contended that they were jointly in possession of the said property bearing Municipal no.B-29-V-6-01705, comprised in *Khewat Khatauni* no.442/615, 447/620, 448/621, *Khasra* no.191/3, 189/3, 188, 189/1, 190/1, 190/3, as per the *jamabandi* for the year 1993-94, situated at Baba Mukand Singh Nagar, Daba Road, Ludhiana, they having purchased the said property vide a registered sale deed bearing Vasika no.17471 dated 13.11.1997, with the revenue records also reflecting their title.

It was further contended that the petitioners were carrying on their business and using the property as a godown and were even paying property tax to the Municipal Corporation in respect of the said property, wherein also an electric connection stood installed in their names, with them paying the electricity bills.

Some photographs are also stated to have been referred to by the petitioners to try and prove their possession over the property.

3. It was next contended by the petitioners that, between them and the defendants, disputes were already pending with even FIR no.205 having been registered against defendant no.1 on 25.11.2015 at Police Station Division no.6, Industrial Area, Ludhiana, due to which (as contended), the said defendant had started interfering in the peaceful possession of the petitioners over the suit property with her (defendant no.1) also having attempted to criminally trespass into the property 'with help from her

henchmen'. However, the aforesaid *Karta* of the HUF (Ramesh Kumar) and his son alongwith some labourers present at the site, resisted the attempt, with Ramesh Kumar allegedly having been beaten up due to which a complaint was filed with the police, but, allegedly, the police at the behest of the defendants, instead registered FIR no.271 dated 12.08.2017 at Police Station Focal Point against Ramesh Kumar and his son. Hence, as per the petitioners-plaintiffs, 'in the garb of the said FIR', the said defendants were again threatening to take illegal possession of the suit property and to obstruct the business of the plaintiffs, also seeking to illegally remove the machinery that stood installed by the plaintiffs.

On the aforesaid contentions, an *interim* injunction prohibiting the defendants from interfering in the possession of the petitioners over the suit property, during the pendency of the suit, was prayed for.

4. In their reply to the application for *interim* injunction, the defendants (respondents herein), other than taking the usually preliminary objections of non-maintainability, misuse of the process of court etc., on merits completely denied the contents of the application.

5. The learned Civil Judge, after noticing the contentions of the parties, recorded a finding that as per the case of the defendants, the suit property was actually comprised in 800 sq. yards, which was in the exclusive possession of the defendants, with a sale deed qua 400 sq. yards yet to be incorporated in the name of the plaintiffs "by defendants as per the family arrangements dated 02.05.2000 and 05.11.2003".

Thus, it was specifically denied by the defendants that the plaintiffs were in exclusive possession of the property.

6. Upon recording the aforesaid contentions of both sides, the

learned Civil Judge came to the conclusion that the suit property was admitted to be a commercial property wherein one factory had been constructed, and out of a total 800 sq. yards, 400 sq. yards were in the ownership of the plaintiffs and 400 sq. yards in the ownership of the first defendant, i.e. Deepti Arora.

7. The sale deed relied upon by the plaintiffs to prove their ownership was also referred to, with that Court also noticing that in paragraph 4(iv) of the preliminary objections taken by the defendants, they had alleged that initially the property was “under the partnership of Sanjeev Kumar and Ramesh Kumar (the former being the husband of respondent-defendant no.1 and the latter being the *Karta* of the first plaintiff, HUF).

It was also found to have been stated in the written statement that there was no 'intervening wall' dividing the property and that the defendants had actually relied upon family arrangements dated 02.05.2000 and 05.11.2003, by which the whole property was to come to the share of the husband of the 1st defendant, i.e. to Sanjeev Kumar, though no sale deed had been executed in their favour.

8. It was also recorded in the order of the learned trial Court that though the petitioners herein (plaintiffs), had denied the family arrangements and the family settlements, the Court still had to consider them, with evidence still to be led on that question, even though the family arrangements actually would not eventually matter, the suit was simply being one seeking a prohibitory injunction, for denying or granting which, only possession over the suit property had to be seen.

9. It was further observed that “in the papers”, Asha Rani (stated before this Court to be the mother of Ramesh Kumar, Rakesh Kumar and

Sanjeev Kumar), as also the plaintiffs and the wife of a 3rd brother, i.e. Neeru wife of Rakesh Kumar, were shown to be the owners of the suit property, with 1500 sq. yards inherited by the defendants.

It was also recorded by the trial Court that as per the case of the defendants themselves, defendant no.1 Deepti Arora became the “registered owner” of 400 sq. yards, while she was in possession of all 800 sq. yards, including 100 sq. yards owned by the plaintiffs.

10. It was next recorded that the plaintiffs had produced a sale deed dated 10.11.1997 to prove their possession, as also a site plan, a copy of a *jamabandi* (record of rights) for the year 2008-09, a copy of a receipt issued by the Municipal Corporation and some photographs, with the defendants having also relied upon some photographs showing the gate of the property and machinery.

It was then recorded in the order that even if the contentions of the defendants were to be believed that defendant no.1 had become the owner of the entire property on the basis of the family arrangement, it was the categorically admitted case of the parties that the family settlement was yet to be acted upon, as 400 sq. yards of the suit property was still “reflected in the name of Ramesh Kumar (*Karta* of his HUF-plaintiff no.1).

As per that Court, it was also not denied that initially the entire property was “under Ramesh Kumar (HUF)”.

11. Having held as above, the learned Civil Judge went on to hold that with an FIR already registered against the plaintiffs by the defendants, therefore to avoid further multiplicity of litigation, as also to preserve the possession of the plaintiffs qua 400 sq. yards, a *prima-facie* case was made out in their favour.

Consequently, the application under Order 39 Rules 1 and 2 was allowed, restraining the defendants from illegally and forcibly dispossessing the plaintiffs from the suit property or from obstructing their business, and from removing the machinery that stood installed, except in due course of law.

12. The defendants (respondents herein) having appealed against the said order dated 21.09.2017, the learned appellate Court (Additional District Judge), after noticing other arguments including the judgments cited by their counsel, also specifically noticed an argument that in paragraph 5 of the plaint, it was stated that “no such other suit between the same parties on the same subject matter is either pending or has been decided by any court of law.”

It was contended on behalf of the defendants that in fact the plaintiffs had concealed the fact that there was litigation earlier pending.

The plaintiffs however denied the said allegation, on the ground that a suit seeking permanent injunction had not been filed earlier and therefore the statement was not incorrect.

13. It was further noticed by the appellate Court that the family settlement dated 02.05.2000 had been entered into when the husband of respondent no.1 was alive, with it being the admitted case of the parties that her husband had committed suicide, with a criminal case registered in that regard against the family of the plaintiffs. However, it was alleged on behalf of defendant no.1 that she was forced to enter into a compromise with regard to that case, she further contending that the family arrangements were also being resiled from.

The appellate Court noticed that vide the first family settlement the disputed property measuring 800 sq. yards fell to the share of the first

defendants' husband, i.e. Sanjeev Kumar, but the plaintiffs backed out from that settlement, on the ground that a sale deed had been effected by defendant no.1 by filing a case in the name of her minor son (respondent no.3 herein, Parteek Arora), under the Guardianship Act, which sale deed was executed in favour of Anshul Chugh, the son of the 3rd brother, Rakesh Kumar, showing therein a consideration of Rs.28,30,000/- having been paid.

It was the contention of the plaintiffs that the said sale deed was actually to be effected also in favour of Ramesh Kumar (*Karta* of the first plaintiff-HUF) as Ramesh Kumar and Rakesh Kumar were running a business on the suit property, with them not litigating against each other, but with defendant no.1 fighting with the whole family, though she actually resided in Noida, UP.

14. The appellate Court further noticed that in the second family settlement dated 05.11.2003 (entered into after the death of Sanjeev Kumar), defendant no.1, Deepti Arora, was shown to be the first party in that document, with the rest of her husbands' family shown to be the second party, the contention therefore being that they were all against her.

Yet further, the learned appellate Court noticed that earlier a suit had been filed by the mother of the brothers, i.e. Asha Rani, stating therein that defendants no.1 to 3 were absolute owners of a factory running in the name and style of Bharat Rubber Factory, with them also being owners in possession of the land, machinery and building of the said factory.

(Learned counsel for the parties before this Court did not dispute that the building in which the said factory was stated to be running (in the said suit) is the suit property).

15. On noticing the aforesaid, the learned appellate Court recorded a

finding that the mother of the brothers (mother-in-law of plaintiff no.2 and defendant no.1) had stated as aforesaid in the aforesaid suit, which was found to be filed on 07.03.2005, with Ramesh Kumar and plaintiff no.2, i.e. his wife Seema Arora, arrayed as defendants no.4 and 5 therein and a written statement filed on behalf of defendants no.4 to 7 jointly, (defendants no.6 and 7 being the other brother, Rakesh Kumar and his wife Neeru). It was stated in paragraph 2 thereof, that an oral family settlement had been arrived at between the parties, which was reduced into writing on 05.11.2003, with the parties thereby having admitted the possession of defendant no.1 over the suit property on 19.05.2006 (seemingly the date on which the written statement was filed).

Yet further, the appellate Court recorded that in the said written statement it was also recorded that defendants no.2 and 3, i.e. the children of respondent-defendant no.1, were owners of a property situated at Giaspura, Daba Road, Ludhiana.

Therefore, it was held by that Court that the plaintiffs were backing out from their own written statement filed in that *lis*, with Ramesh Kumar even having filed an affidavit on March 30, 2006 before the Sub-Divisional Magistrate (West), Ludhiana (in wholly different proceedings), to the following effect:-

“During the life time of Sanjeev Kumar family settlement was arrived on 02.05.2000 and as per family settlement Ramesh Kumar and Rakesh Kumar, became absolute owners in possession of the afore above said property and the said family settlement was duly acted upon. Not only this, after the death of Sanjeev Kumar another family agreement was arrived between the parties to the present petition and that agreement admitted by Deepti that Ramesh Kumar and Rakesh Kumar as owners in the

above said property, subject matter of present proceedings. A civil suit titled as Asha Rani v. Deepti and others for declaration and mandatory injunction is pending at civil Courts, Ludhiana.”

16. [It has to be noticed by this Court at this stage itself that the aforesaid part of the affidavit, strangely, was also found by the appellate court to be an admission by Ramesh Kumar (plaintiff no.1 as *Karta* of his HUF), of the title of respondent-defendant no.1 Deepti Arora to the suit property and therefore, it held that seen with his stand in the written statement filed in the suit instituted by his mother, Asha Rani, he could not back out of such admission.

Very obviously, the Additional District Judge erred in seeing that the said reproduced part of the affidavit did not disclose any such admission by Ramesh Kumar. Though, as pointed out to this court by learned counsel for the respondents, in another part of the affidavit, he made an admission that the family agreement had been acted upon. In the context of the written statement filed in the mothers' suit also, it is not denied that the family settlement in favour of respondent-defendant no.1 was not denied by Ramesh Kumar and his co-defendants no.5 to 7].

17. It was thereafter held by that Court that the findings in criminal proceedings whereby the accused were acquitted (seemingly in the case relating to suicide of the husband of respondent-defendant no.1), were not binding on the civil Court.

Thereafter, the appellate Court held that simply because the appellant before that Court (defendant no.1 Deepti Arora) had claimed in FIR no.271 dated 12.08.2017 that she was trying to take possession of the suit property, would not go against her, because actually she had categorically stated that she had been in such possession for 15 years.

18. As regards photographs of June 2016 relied upon by the plaintiffs, they were held to be nothing but an attempt to take illegal possession on the basis of which it cannot be said that they were thereafter in continuous possession. It was also held by the appellate Court that the compact disc run before that Court also showed the possession of the defendants and therefore, no finding could be given on the photographs that it was actually the plaintiffs who were in possession.

Yet further, that Court held that the electricity bills relied upon by the plaintiffs also did not show any huge consumption of electricity, with no old bill shown showing any large consumption, to prove that a business was being run on the premises.

As regards the receipts issued by the Municipal Corporation on 28.06.2017, it was held that they had only been created to dispossess the defendants from their property, with the statement made by the plaintiffs and their co-defendants no.6 and 7 in the suit instituted by the mother, as also the affidavit filed before SDM in 2006, reiterated by that court, finally to hold that it was actually the defendants who were in possession and consequently, the plaintiffs had no right to a temporary injunction in their favour during the pendency of the suit.

19. While concluding his order, referring to judgments cited, the learned Additional District Judge further observed that though “a document worth more than 100” is compulsorily registrable, however the applicability of those judgments (of this Court), as were cited on behalf of the plaintiffs, was repelled, on the ground that though such a document is compulsorily registrable, however, the husband of defendant no.1, i.e. Sanjeev Kumar, had a pre-existing right in the property.

20. On the aforesaid findings, the order of the learned trial Court, granting *interim* injunction to the plaintiffs was set aside, thereby dismissing the application of the petitioners-plaintiffs filed under Order 39 Rules 1 and 2 CPC.

21. Before this Court, Mr. Sumeet Mahajan, leaned senior counsel appearing for the petitioners-plaintiffs, firstly submitted that the suit property is in the ownership of the petitioners to the extent of 400 sq. yards as per a sale deed dated 13.11.1997, duly referred to by the learned trial Court in its order and moreover, if the respondents-defendants are relying upon the family settlements in their favour, by which they claim that the suit land falls to them, then there would have been no need for respondent-defendant no.1, Deepti Arora, to have purchased the suit land, or any part thereof, from Neeru, wife of the 3rd brother, Rakesh Kumar, vide a sale deed dated January 20, 2015 (a copy of which has been annexed as Annexure P-18 with this petition).

Hence, he submitted that very obviously, the family settlements were never actually acted upon and the petitioners-plaintiffs, who are admittedly the owners of the suit land by way of the sale deed in their favour, continued to remain in possession thereof and the learned trial Court did not err in granting them *interim* injunction.

22. Mr. Mahajan next submitted that though neither of the family settlements, dated 02.05.2000 and 05.11.2003 (Annexures P-5 and P-6 respectively), are denied by the petitioners, however, as per the said settlements, half the share of Sanjeev Kumar, husband of respondent no.1, was to come to the share of the petitioners, but was actually sold to the son of the 3rd brother, i.e. to Anshul Chugh son of Rakesh Kumar, vide the sale deed annexed as Annexure P-10 with the petition.

[In fact, it is seen that the sale deed Annexure P-18 is executed by both, the aforementioned Neeru Arora as also the mother of the brothers, i.e. Asha Rani, in favour of respondent-defendant no.1 Deepti Arora. The copy of the sale deed, Annexure P-10, is seen to be executed by respondents no.2 and 3, i.e. the children of respondent no.1, in favour of Anshul Chugh son of Rakesh Kumar, but is not the suit property and is, in fact, some other property, as has been submitted by Mr. Mahajan, but which he contended had actually fallen to the share of defendant no.1 who thereafter violated the terms of the agreement and sold it to Anshul Chugh son of Rakesh Kumar.]

23. Learned senior counsel next contended that in fact even in previous litigation the respondents, and in fact the petitioners also, had taken a stand that the family settlement had not been acted upon, with respondent-defendant no.1 stating that she was not bound by it and was not the owner of the suit property which is now claimed by her.

In this context, he referred to Annexure P-8 with this petition which is seen to be a written statement filed on behalf of defendants no.1 to 3 in the suit filed by the mother of Ramesh Kumar, Rakesh Kumar and Sanjeev Kumar, the said defendants being present respondents no.1 to 3 (Deepti Arora and her children).

From that written statement, Mr. Mahajan pointed to sub-para (i) of para 1 of the preliminary objections, which reads as follows:-

“(i) The suit is based on illegal and invalid family settlement dated 05.11.2003, which is neither registered, nor stamped and hence the same is not admissible in evidence. No title can be claimed by the plaintiff on the basis of alleged document. Moreover, the answering defendant no.1 had no authority to enter into any such family settlement on behalf of the minors, in the absence of any permission by the Guardian Judge under Hindu

Minority and Guardianship Act or any other relevant law. The alleged family settlement, therefore, is not binding upon the answering defendants.”

24. Mr. Mahajan next referred to the written statement of the petitioners and their two co-defendants in the same civil suit filed by Asha Rani (copy annexed as Annexure P-20), wherein the petitioners in fact admitted that Asha Rani was the absolute owner in possession of another property bearing Unit no.B-I-630/11, Kundanpuri, Bindraban Road, Civil Lines, Ludhiana, and had also stated that they themselves, i.e. the petitioners herein and the other brother, Rakesh Kumar, had become owners in possession of Plot no.60, Industrial Area-A, Ludhiana.

He submitted that this was a 'vague admission', in comparison to the stand taken by the defendants herein, to the effect that they were not the owners of the suit property and that the family settlement was not binding on them.

25. Thus, learned senior counsel in a nut-shell submitted that the reliance upon the family settlements by the respondents, to now submit that they are in possession of the suit property in terms thereof, is wholly an after thought and the learned lower appellate Court has completely ignored all these facts, which the trial Court had taken due notice of it.

26. *Per contra*, Mr. Vikas Bahl, learned senior counsel appearing for the respondents-defendants, submitted that the suit filed by the petitioners herein, was simply one seeking a decree of permanent injunction and not one for specific performance of any agreement, nor seeking any declaration of title and consequently, the ownership of the suit property is inconsequential for the purpose of the said suit and for the purpose of granting or declining *interim* injunction to the petitioners-plaintiffs.

He further submitted that there is, in fact, no averment in the suit at all of the respondents-defendants backing out of the family settlements and consequently, the reference to the written statement filed in the suit of Asha Rani, wherein the present respondents are shown to have stated that they did not own the suit property and in fact some other property had come to their share or that they were not bound by the family settlement, is again inconsequential. Learned senior counsel pointed to what was also pointed out before the appellate Court, i.e. paragraph 5 of the suit of the plaintiffs, stating that “no such other suit between the same parties on the same subject matter” was either pending or had been decided, whereas in fact, Ramesh Kumar (*Karta* of his HUF, petitioner-plaintiff no.1), had filed a suit seeking a decree of declaration that he and Rakesh Kumar were joint owners of the suit property and some other properties.

Mr. Bahl therefore submitted that having falsely averred in the suit, in any case the petitioners were not entitled to any *interim* relief.

27. Mr. Bahl next referred to the family settlement dated May 02, 2000 (copy annexed as Annexure P-5), to point out that it was stated in paragraph 2 thereof that the husband of respondent no.1, i.e. Sanjeev Kumar, was the exclusive proprietor of the factory which had been shifted to the suit premises.

He also pointed to paragraph 4 of the said settlement wherein it is stated that Sanjeev Kumar, as also the wife of the other brother (Rakesh Kumar) and both the petitioners herein, were to be the owners of a 1/4th share each in the suit property.

He next pointed to the agreement dated 05.11.2003 (Annexure P-6), wherein in paragraph 2 thereof, it is stated that both the petitioners, the

aforementioned wife of Rakesh Kumar (Neeru Arora), the mother, i.e. Asha Rani, and the respondents, were all owners of the factory and that all the others, i.e. other than respondent no.1, would be bound to get registered the site of the factory in the name of respondent-defendant no.1, who would then have complete right to use it in any manner.

To similar effect, he pointed to another recital in the settlement and thereafter to paragraph 5 of that agreement, wherein it is stated as follows:-

“Both the parties would be bound to this written compromise and would be responsible for looking after their respective properties and would remain in possession of the same. This mutual compromise is reduced into writing which is acceptable to both the parties.”

Hence, Mr. Bahl submitted that even as per the said agreement actually the parties would remain in possession of their respective properties as per the agreement and consequently, it is obvious that respondent no.1 was in possession thereof.

28. Mr. Bahl next pointed to the suit filed by the mother, Asha Rani, averring therein that in fact, the respondents herein (defendants no.1 to 3 in that suit) were absolute owners in possession of the suit property, and that all the parties were in possession of their respective properties as per the settlement dated 05.11.2003.

Mr. Bahl next pointed to the written statement filed by the present petitioners in the same suit (as defendants no.4 and 5 therein, alongwith defendants no.6 and 7 therein), to submit that the prayer made in the suit of the mother was admitted by them to contend that they had in fact no objection if the suit was decreed in favour of the mother.

Learned senior counsel then specifically stressed on what was stated by the present petitioners in paragraph 3 of their written statement in that suit, to the effect that the plaintiff in that suit (Asha Rani) was the absolute owner in possession of the property at Kundanpuri, whereas defendants no.3 and 4 (actually seen to be the present respondent no.3 and Ramesh Kumar (*Karta*-HUF-petitioner-plaintiff no.1), became owners in possession of the suit property, and defendants no.4 to 6, i.e. plaintiff no.1 (in his individual capacity), plaintiff-petitioner no.2 and Ramesh Kumar became owners in possession of a 3rd property owned by the family.

Thus, Mr. Bahl submitted that actually the reference to “defendants no.3 and 4” was a typographical error, with it actually intended to be said that it was defendants no.2 and 3, i.e. the children of respondent no.1 herein, who became owners in possession of the suit property, with the other brothers and their wives becoming owners in possession of one property each elsewhere.

29. Mr. Bahl then referred to the affidavit of petitioner no.1, Ramesh Kumar, (again in his individual capacity, copy annexed as Annexure P-21), to submit that actually he and his brother Rakesh Kumar became owners in possession of property no.60, Industrial Area-A, Ludhiana, with it also stated that the family settlement was duly acted upon, with respondent-defendant no.1 having become the proprietor of the factory running from the suit premises.

(The said affidavit is seen to be the one filed before the Sub-Divisional Magistrate in proceedings initiated by respondent-defendant no.1 under Section 145 of the Code of Criminal Procedure, against petitioner no.1, his brother Rakesh Kumar and mother Asha Rani).

30. Learned senior counsel for the respondents then referred to the letter written by petitioner no.1, Ramesh Kumar, on 23.02.2005, to a member of the Punjab State Human Rights Commission, as a rejoinder in a complaint made by him to the Commission against the Ludhiana Police, wherein the said petitioner stated that it was the respondent-defendant who was in possession of the suit property.

He also referred to the photographs (Annexure R-2 with CM-18420 filed by the respondents, which is an application seeking to place on record the rejoinder to the Commission as also the photographs), to submit that the photographs are that of respondent-defendant no.1, shown to be in the factory located on the suit premises, with her also seen to be locking a gate and standing outside the property, showing it to be owned by her and her children.

As regards the ownership of the suit property, Mr. Bahl pointed to clause 4 of the agreement to submit that the entire 800 sq. yards thereof was to come to the respondent-defendant no.1.

31. Consequently, learned senior counsel for the respondents submitted that the lower appellate Court had made no mistake, that with all the admissions made by petitioner no.1 himself, that defendant no.1 was in possession of the suit property, he could not now turn around to say that actually she was not in possession and in fact, he and his wife, i.e. both the petitioners herein, were in possession thereof and therefore entitled to an *interim* injunction during the pendency of the suit.

32. Lastly, Mr. Bahl referred to three judgments passed in **Surjit Das vs. Bachan Das** 1996 (1) PLR 668, **Holy Health and Educational Society (Regd.) vs. Delhi Development Authority** 1999 (3) RCR (Civil) 531

and Amteshwar Anand vs. Virender Mohan Singh and others 2005 (4) RCR (Civil) 485.

From the last judgment, Mr. Bahl submitted that if any property comes to a person by way of a family settlement, the settlement is to be honoured.

33. In rebuttal to the aforesaid arguments, Mr. Mahajan, learned senior counsel appearing the petitioners, again pointed to the sale deed dated 20.01.2015 (copy annexed as Annexure P-18), to submit that it was executed by Neeru Arora and Asha Rani in favour of respondent no.1 and that the ownership rights of their share in the suit property (200 sq. yards) was being transferred to the said respondent with possession also delivered to her at the spot. He therefore submitted that possession in fact was contended to have been handed over to her only on that date, which would not be necessary to be so recorded if possession had already been given to her in terms of the family settlement and consequently, he submitted that actual possession cannot be said to hers, i.e. of respondent-defendant no.1.

34. Mr. Mahajan next referred to the receipt issued by an Electricity Corporation, dated 19.06.2017 (Annexure P-16), showing the consumer of electricity to be petitioner no.1 (in his individual capacity). Even though there is no address shown on the receipt, learned senior counsel produced in Court a photocopy of the bill towards payment of which the receipt was issued, showing the same consumer number, which bill is contended to be in the name of Ramesh Kumar.

Learned senior counsel for the respondents interjected to submit that the bill being for an amount of Rs.170/- only, it cannot be a bill for a running factory and therefore the contention that the petitioners are running

their business there is obviously wholly false, which is also borne out from the photographs showing respondent no.1 to be standing in an empty factory, which though has machinery installed in it, but obviously it is in complete disuse.

35. Mr. Mahajan next pointed to the property tax receipt, Annexure P-17, to submit that it was also paid for with the property standing in the name of first petitioner.

(Mr. Bahl again interjected to submit that in any case the ownership of most of the suit premises not being disputed to be undoubtedly standing in the name of the petitioners, with it to have been actually transferred as per the family arrangement, the property tax as also the electricity bills would be in the name of the petitioners, which does not prove actual possession.)

36. As regards Mr. Bahls' contention, that since M/s Bharat Rubber Factory had been admitted to be transferred to the suit premises and therefore, it was run by the husband of defendant no.1, with possession of the suit property also transferred to respondent no.1, Mr. Mahajan again pointed to the paragraph 3 of the written statement filed by the present respondents-defendants, in the suit of Asha Rani, wherein it was specifically denied by them that they were owners in possession of the factory and the building and the machinery contained in it.

[However, this is to be seen with the fact that in the very next line it is stated by the respondents-defendants herein that "The said property measuring 1325 sq. yards is owned by the answering defendants only in equal shares". Yet, immediately thereafter, it is also stated that the "alleged family settlement dated 05.11.2003" was neither legal nor valid and therefore not

binding on them.]

37. Lastly, Mr. Mahajan relied upon a judgment of a co-ordinate Bench of the Bombay High Court in **Govind Anant Goltekar and others v. Dasharath Deoba Goltekar** AIR 2006 Bombay 174, to submit that where a suit for injunction is based on possession and the plaintiff produces a sale deed in support of his title, it would be for the defendant to show that he had a better title and in the absence thereof the plaintiff was entitled to an injunction in his favour.

38. Having considered the detailed arguments made by learned senior counsel on both sides, as also the orders passed by the learned Courts below, this Court is to first notice that undoubtedly, as pointed out by learned senior counsel for the respondents, the suit filed by the present petitioners is one seeking prohibitory injunction against the respondents-defendants and not a suit seeking any kind of declaration or for specific performance of any agreement. Hence, what is to be determined is the *prima facie* case for *interim* injunction in favour of the plaintiffs, (or if they have failed to make out any case for such *interim* injunction).

39. With learned senior counsel appearing for both sides having pointed to the pleadings of both parties in earlier proceedings, in the suit filed by the mother of Ramesh Kumar (mother-in-law of respondent no.1), and the admission made by the first plaintiff in his complaint/application to the Punjab State Human Rights Commission, as also his affidavit filed in the proceedings under Section 145 Cr.P.C. before the Sub-Divisional Magistrate, undoubtedly it was contended by him in the complaint that respondent-defendant no.1 was in possession of the property. In the affidavit before the SDM, he stated that the family agreement had been acted upon.

Per contra, respondent-defendant no.1 on her behalf and on behalf of her minor children stated in her written statement in the suit filed by her mother-in-law (Asha Rani) that she was not owner or in possession of the suit property and that the family arrangement was not binding on her, it being an unregistered document and in any case she not being competent to sign it.

The written statement filed by the first petitioner, in reply to his mothers' suit (copy annexed as Annexure P-20), is seen to be dated 19.05.2006 and his affidavit in the proceedings under Section 145 Cr.P.C. is seen to be dated 30.03.2006, wherein he has stated that the family settlement was acted upon. His letter addressed to Punjab State Human Rights Commission, wherein he categorically admits that the property is already in possession of the complainant, Deepti Arora, is dated 23.02.2005.

Though the affidavit in the proceedings under Section 145 Cr.P.C. (Annexure P-21) has been annexed by the petitioners themselves, that is for the purpose of showing that it had been stated therein by petitioner no.1 that the family settlement had been acted upon, whereas the respondent-defendants' statement in the suit of Asha Rani was that it was never acted upon and that she was in possession of the suit property.

[The suit filed by Asha Rani is stated to have been dismissed in default.]

40. Very obviously, 12 to 13 years ago the stand of the parties to this *lis* was diametrically opposite to what it is today, i.e. at the time of filing of the suit out of which this petition arises, which was filed on August 14, 2017. Both sides are also relying upon photographs to show that they are in possession of the suit premises, with the photographs relied upon by the petitioners contended to be showing the 1st petitioner inside the premises with

some workers, (shifting some machinery), and as already noticed earlier, the photographs relied upon by the respondents stated to be that of respondent no.1 inside and outside a factory, again showing some old machinery laying in it.

41. As regards the two sale deeds dated 20.01.2015 (Annexures P-10 and P-18), the first, as also noticed earlier, is seen to be executed by the respondents herein transferring the factory on an area of 175 sq. yards, (with the total plot shown to be 700 sq. yards), in favour of Anshul Chugh son of a 3rd brother, Rakesh Kumar. Boundaries of what has been sold are naturally described in the sale deed.

Annexure P-18 is a sale deed executed by Neeru Arora wife of Rakesh Kumar and her mother-in-law, Asha Rani, transferring 250 sq. yards of the suit property in favour of respondent no.1, Deepti Arora, with again transferred area described in the suit property.

It needs to be stated here that the description of the areas transferred, at least from the sale deeds themselves, cannot be commented upon to be either the same (as regards the boundaries described), or different, which would wholly be a matter of evidence to be led before the trial Court on the basis of site plans etc.

42. Thus, with the parties to the *lis* having taken completely opposite stands in 2005-06, to what they are now taking, with the earlier stand of the petitioners being that they are not in possession of the suit property with the respondent-defendant being in possession thereof, and the defendant on the other hand at that time stating to the contrary, obviously wanting to show that she was entitled to a share in the other properties belonging to the family; and now the position taken being completely different, therefore, whether at the

time of filing of the suit the petitioners-plaintiffs were in possession thereof, or it was the respondents in possession, is not possible to be determined in the absence of evidence strictly led before the trial Court by both sides.

As regards the photographs shown, it appears that they are possibly photographs of different parts of a factory, or possibly of two different factories altogether. That again would be a matter of evidence to be strictly led before the trial Court.

Very possibly, both sides may be in possession of some parts of the suit property, to the exclusion of the other.

The sale deeds transfer ownership, and though possession is shown to be delivered to the respective vendees thereof, whether there is actual possession or not, is not possible to determine at this stage. Further, the sale deed, Annexure P-10, is only a transfer of 175 sq. yards, as can be made out from the vernacular version thereof, i.e. the sale from the defendant to Anshul Chugh. Again, the area of land seen to be sold, as per the vernacular version of the sale deed, Annexure P-18, in favour of defendant no.1, is seen to be 250 sq. yards.

Thus, with the plot of the suit property stated to be 800 sq. yards, which part thereof was sold vide these two sale deeds, again is a matter to be led by way of evidence before the trial Court.

43. Considering the aforesaid situation in toto, again reiterating that the parties have taken completely opposite stands to what they took in earlier litigation in the years 2005-06, actual possession of the suit property on the date of the filing of the suit, cannot be determined without complete evidence having been led before the trial Court.

Hence, without making any comment on the actual merits of the

evidence to be led by both sides in the suit filed by the petitioners, seeking permanent injunction qua the suit property thereby restraining the respondents from interfering in it, both the orders of the learned Courts below, i.e. the one of the trial Court granting injunction to the petitioners-plaintiffs and the one impugned in the present petition, declining such injunction (thereby reversing the order of the trial Court), are both modified to the extent that the parties are directed to maintain status quo qua possession till the decision of the suit, such possession even *prima facie* having to be strictly proved by both sides, in view of the conflicting stands taken by them at different points of time.

Disposed of as above.

No order as to costs.

Naturally, all observations made herein above, are in the context of the application filed by the petitioners under Order 39 Rules 1 and 2 CPC and will have no bearing on the merits of the case, which, to yet again repeat, has to be proved on the basis of evidence led by both sides.

October 16, 2018

dinesh

**(AMOL RATTAN SINGH)
JUDGE**

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes