

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

**CR No.2173 of 2018(O&M)
Date of Decision-29.11.2019**

Brij Pal @ Brij Mohan ... Petitioner
Versus
Gram Panchayat Village Dahisra and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Harkesh Manuja, Advocate
for the petitioner.

Mr. Navneet Singh, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the orders dated 19.03.2017 and 07.07.2017 passed by the Courts below, dismissing the application under Order 39 Rules 1 and 2 read with Section 151 CPC concurrently.

[2]. At the time of issuance of notice of motion on 16.04.2018, following order was passed by the Co-ordinate Bench:-

"The lower Court record perused.

The learned counsel for petitioner contends that petitioner was not party to the previous suit filed by BDPO which was decreed in favour of BDPO. It is contended that petitioner is in possession of suit land which was shamlat deh hasab rasad raqba khewat. He has produced photocopy of notice issued under Section 24 (1) of Haryana Panchayati Raj Act, 1994, for handing over the possession of suit land to Gram Panchayat, in Court today, indicating that petitioner is in possession of suit land. Same is taken on record.

Notice of motion for 18.7.2018.

In the meanwhile, status quo regarding possession of suit land be maintained."

[3]. Perusal of the record would show that as a result of Act No.9 of 1992, mutation No.727 was sanctioned in the name of Gram Panchayat in respect of suit property. Mutation was challenged by the proprietors before the Collector on 13.01.1993. In the meanwhile, partition proceedings were finalized and the land was mutated in the name of '*shamlat deh hasab rasad raqba khewat*' vide mutation No.763 dated 27.12.1995. Partition proceedings were started around 1980. Partition was ordered on 02.02.1998. Mutation No.776 of partition was sanctioned for total land measuring 882 kanals, 9 marlas out of which 42 kanals, 5 marlas of land was mutated in favour of the petitioner and his brother(s). Mutation No.763 was challenged before the Commissioner who accepted it and again reverted in the name of Gram Panchayat and mutation No.727 was restored. Financial Commissioner dismissed the revision petition filed by the proprietors on 31.09.2002. Writ petition was filed, wherein order dated 30.01.2004 was passed in the context of seeking declaration by the Gram Panchayat. Mutations were kept in '*nazarsani*' by the Collector. On the basis of partition, the proprietors sold their shares. The brother and wife of the petitioner purchased some land through sale deeds. Mahabir purchased 11 kanals 17 marlas of land, vide different sale deeds dated 06.01.2010, 15.01.2010, 29.01.2010 and 27.01.2011. Wife of

the petitioner also purchased 3 kanals 4 marlas of land, vide sale deeds dated 14.01.2010 and 03.02.2010.

[4]. Thereafter, the present suit came to be filed by the plaintiffs against the Gram Panchayat for declaration and permanent injunction to the effect that orders dated 23.05.2012, 17.03.2015, mutation No.1196 and order dated 15.09.2016 are illegal, null, void and are not binding upon the rights of the plaintiffs as they were not parties to the Civil Suit No.12/D.C of 2012 decreed on 17.03.2015. Both the Courts below have declined the prayer in terms of Order 39 Rules 1 and 2 CPC.

[5]. Learned counsel for respondent No.1 submitted that brother and wife of the petitioner were parties to the aforesaid suit, therefore, the petitioner cannot claim any benefit out of his non-impleadment in the suit filed by BDPO, which was decreed on 17.03.2015.

[6]. As against this, learned counsel for the petitioner relied to the pleadings in the said Civil Suit No. 12/D.C dated 27.01.2012 to the extent that the entitlement of the petitioner, his wife and brother qua the suit land measuring 42 kanals, 5 marlas was not challenged in the said suit, rather challenge was made to the extent of area purchased by them through co-sharers. Learned counsel by making reference to document No.8037 dated 15.01.2010 in respect of 2 kanals, 12 marlas, document No.7531 dated 06.01.2010 in respect of 2 kanals 18 marlas, document No.8412 dated 27.01.2011 in

respect of 2 kanals 18 marlas, document No.8539 dated 29.10.2010 in respect of 3 kanals 19 marlas, document No.10739 dated 23.03.2010 in respect of 4 kanals 2 marlas and document No.10860 dated 25.03.2010 in respect of 11 kanals 14 marlas, submitted that the aforesaid documents were related to the purchases made by defendant No.5 i.e. brother of the petitioner and the said purchases were beyond the entitlement of the petitioner and his brother and beyond the land measuring 42 kanals, 5 marlas which came to their shares in partition on 02.02.1998. Similarly, learned counsel relied upon purchases made by defendant No.7 vide sale letter No.8659 dated 03.02.2010 in respect of 1 kanal 1 marla and sale letter No.8113 dated 10.01.2010 in respect of 2 kanals 3 marlas. The aforesaid facts were duly pleaded in the suit filed by BDPO which was decreed on 17.03.2015 and in the said suit, entitlement of the petitioner, his brother and his wife in relation to 42 kanals 5 marlas was not under challenge. The *rapat rojnamcha*, vide which possession of the land in dispute was allegedly taken by the State would remain debatable.

[7]. Admittedly, the Gram Panchayat has issued a notice under Section 24(1) of Haryana Panchayati Raj Act, 1994 against the petitioner for handing over the possession of the suit property in favour of Gram Panchayat. The suit is still at the stage of leading plaintiffs evidence.

[8]. At the time of issuance of notice of motion on 16.04.2018, Co-ordinate Bench has already granted *status quo* regarding possession over the suit property. In view of facts on record, it would be just and appropriate to direct both the parties to maintain *status quo* during pendency of the suit.

[9]. For the reasons recorded hereinabove, I deem it appropriate to confirm the order dated 16.04.2018 passed by the Co-ordinate Bench, granting *status quo* regarding possession over the suit property. Keeping in view the facts and circumstances of the case, the trial Court shall be obligated to decide the suit at the earliest by giving short adjournments.

[10]. Disposed of.

(RAJ MOHAN SINGH)
JUDGE

29.11.2019
Prince

Whether reasoned/speaking Yes/No

Whether reportable Yes/No