

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

CR No.4014 of 2017(O&M)
Date of Decision: 21.01.2019

Jagmal

... Petitioner

Vs

M/s Attractive Construction Pvt. Limited and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. B.S. Rana, Sr. Advocate with
Ms. Divya Bajaj, Advocate
for the petitioner.

Mr. Aashish Chopra, Advocate with
Ms. Gurpreet Randhawa, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioner against the order dated 29.05.2015 passed by Civil Judge (Junior Division), Gurgaon and order dated 14.02.2017 passed by Additional District Judge, Gurgaon vide which the application under Order 39 Rules 1 and 2 CPC filed by the plaintiffs/respondents was concurrently accepted.

[2]. Plaintiffs filed a suit for permanent injunction along with an application under Order 39 Rules 1 and 2 CPC on the ground that they are lawful owners in possession of land

bearing khasra No.320/2/1 measuring 6 biswas situated in the revenue estate of village Islampur, Tehsil and District Gurgaon. Plaintiffs have purchased the suit property vide different sale deeds in the year 1996 and they were put in possession by their vendor. The suit land was part of commercial colony measuring about 11.47 acres which is owned and possessed by the plaintiffs. Plaintiffs obtained licences for development of commercial colony which was granted to them by Town and Country Planning Department, Haryana. The building plans for developing the said colony were sanctioned. Plaintiffs claimed that huge money has been invested by them in the procurement of land and development of colony. Defendant has been threatening to dispossess the plaintiffs from the suit land on unfounded assumption. Plaintiffs sought restraint against the defendant from dispossessing the plaintiffs and taking forcible possession from them and also to restrain the defendant from demolishing the construction being raised upon the suit property.

[3]. The application was contested by the defendant.

[4]. Trial Court allowed the application by appreciating *prima facie* case in favour of the plaintiffs. Balance of convenience was also found in favour of the plaintiffs and it was found that in the event of not granting ad interim injunction, the

plaintiffs will suffer irreparable loss and injury.

[5]. Original khasra No.320 was of 13 biswas. Shera and Surta were owner to the extent of half share, whereas Chatter Singh was owner of remaining half share. In 1959, Chatter Singh exchanged 3 biswas of his half share with Ram Sarup. Mutation No.247 was sanctioned on 27.05.1959. Tatima was cut in the year 1959. Khasra No.320/1 was shown in favour of Ram Sarup and khasra No.320/2 remained as such. Mutation No.247 was disputed on the ground that Ram Sarup was not having land in khasra No.602 which was subject matter of exchange. Petitioner Jagmal is the son of Chatter Singh. Qua remaining half share, Shera and Surta got the land exchanged with Mange son of Ganga Dass on 17.08.1971. Exchange deed (Annexure P6) was executed and mutation No.790 (Annexure P7) was sanctioned on 21.05.1990. Mange had sold the land to Malook Singh on 16.10.1985 and mutation of the said sale deed was sanctioned on 06.05.1990. Thereafter, Malook Singh suffered a civil Court decree in favour of Neeraj. Mutation No.797/1 was sanctioned in favour of Neeraj who in turn, sold the land to Jage Ram on 23.08.1990 and mutation No.851 was sanctioned. Thereafter, the land was sold to the plaintiffs vide four different sale deeds and mutation of the sale deeds No.1380, 1383, 1384 and 1386 were sanctioned. The

case has some part history in respect of civil Court decree in a suit titled Deep Chand Vs. Mange Ram. Deep Chand sold two biswas of land to Sikh Realtors. Mutation No.1411 was sanctioned on 24.06.1996. Thereafter, the land was exchanged with one Company on 05.03.1997 and mutation No.1406 was sanctioned for two biswas of land.

[6]. Learned Senior Counsel for the petitioner vehemently submitted that as per carving out of tatima, the same was in the absence of the petitioner as no notice was issued to the petitioner and as per revenue record, he is still shown to be co-sharer and the plaintiffs cannot construct the land without partition of the suit property. Learned Senior Counsel relied upon Annexure P7 in the aforesaid context.

[7]. Perusal of the record would show that in a civil suit for declaration and permanent injunction filed by the petitioner along with Subh Ram, pleadings were made in para No.2 of the plaint that even the partition was carried out by way of carving out of tatima without the consent of all the co-sharers including the plaintiffs in that suit. Written statement in the present suit was filed in the year 2014, therefore, the petitioner and his co-plaintiff were oblivious of the fact and they did not mention in respect of cancellation of mutation regarding tatima and recommendations (if any) made by the revenue officials in

respect of declaring the mutation to be a contested mutation. According to the plaintiffs/respondents, building material is lying on the spot and excavation work is in progress.

[8]. The provisions of Order 39 Rules 1 and 2 CPC are based on three golden principles and ingredients of all the principles viz-a-viz existence of *prima facie* case, balance of convenience and irreparable loss in the event of non-grant of interim injunction are in favour of the plaintiffs/respondents.

[9]. At this stage, the facts pleaded by both the parties cannot be appreciated to the hilt in the absence of any material on record. Both the parties would lead their evidence at the relevant stage. Any observation made by this Court on merits at this stage, may prejudice the case of either sides during trial. Civil suit is also pending wherein, the application filed under Order 39 Rules 1 and 2 CPC was considered on the basis of pendency of present revision petition. Civil Judge (Junior Division), Gurugram disposed of the application being not pressed with a liberty to the plaintiff therein to press the application at an appropriate stage. However, keeping in view the statement suffered by the plaintiff and order dated 26.07.2017 passed by this Court in the present revision petition, Civil Judge (Junior Division), Gurugram directed the parties to maintain status quo regarding possession and alienation of the

suit property. Plaintiff and defendants No.2 to 5 therein were directed not to change the nature of the suit property till further orders in the present revision petition. The application under Order 39 Rules 1 and 2 CPC was dismissed as infructuous being not pressed with the aforesaid liberty to press the same at an appropriate stage. The controversy with regard to carving out of tatima has to be decided by the trial Court with reference to evidence on record. Tatima was allegedly carved out in the year 1959. The land has changed hands from time to time.

[10]. Both the Courts below have found existence of *prima facie* case in favour of the plaintiffs/respondents. Balance of convenience was also found in favour of the plaintiffs and since excavation work is in progress and building material is lying on the spot, therefore, it was found that in the event of not granting any ad interim injunction, the plaintiffs may suffer irreparable loss. Plaintiffs have obtained licences from Town and Country Planning Department and thereafter, they have been involved in setting up a commercial colony on the land, so purchased by them vide four different sale deeds. The Courts below have considered the material on record on *prima facie* basis and after finding that separate khasra No.320/2/1 is in exclusive possession of Jage Ram son of Phool Singh (predecessor-in-interest of the plaintiffs) granted ad interim injunction in favour

of the plaintiffs. Even if, there has been any wrong entry in the revenue record qua the share of Jage Ram, the defendant or other co-sharers, no proceedings have been initiated by any of the co-sharers for correction thereof till date. At the stage of granting ad interim injunction, the aforesaid three principles are to be considered.

[11]. The discretion exercised by the Courts below cannot be interfered with in the present revision petition as the *prima facie* findings recorded by the trial Court are not found to be perverse. This revision petition is found to be totally devoid of merits and the same is accordingly dismissed. Nothing observed hereinabove shall be taken to be an opinion on merits of the case at the time of final adjudication of the case.

21.01.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No