

CR-5900-2015(O&M);  
CR-5901-2015(O&M);  
CR-5999-2015(O&M); and  
CR-5898-2017(O&M)

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

(1) CR-5900-2015(O&M)

Sadhu Singh and others

...Petitioners

Versus

Shiv Nand and others

...Respondents

(2) CR-5901-2015(O&M)

Sadhu Singh and others

...Petitioners

Versus

Kewal Krishan and others

...Respondents

(3) CR-5999-2015(O&M)

Sadhu Singh and others

...Petitioners

Versus

Ajay and others

...Respondents

(4) CR-5898-2017(O&M)

Mahesh Kumar and another

...Petitioners

Versus

Sadhu Singh and others

...Respondents

**Date of decision:-9.12.2019**

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**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.Abhishek Singla, Advocate for  
Mr.Suresh Singla, Advocate  
for the petitioners in CR-5900-2015, CR-5901-2015 and  
CR-5999-2015 and for respondents in CR-5898-2017.

Mr.Abhinav Gupta, Advocate  
for the petitioners in CR-5898-2017 and  
for respondents No.1 and 2 in CR-5999-2015.

Mr.Kashish Garg, Advocate  
for respondents No.1 to 3 in CR-5900-2015  
for respondents No.1 and 2 in CR-5901-2015.

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**H.S. MADAAN, J.**

Vide this order, I shall dispose of four civil revision petitions i.e. CR-5900-2015, CR-5901-2015, CR-5999-2015 filed on behalf of petitioners Sadhu Singh and others and CR-5898-2017 filed by petitioners Mahesh Kumar and another.

CR-5900-2015, CR-5901-2015, CR-5999-2015 have been filed for setting aside of impugned order/judgment dated 8.7.2015 passed by learned Additional District Judge (Fast Track Court), Bathinda whereby appeal filed by defendants/respondents has been allowed and order dated 24.7.2013 has been set aside and CR-5898-2017 has been filed by the petitioners for setting aside of the impugned order dated 16.2.2017 passed by Civil Judge (Jr.Divn.), Bathinda whereby an application under Order 7 Rule 11 CPC filed

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by them for rejection of plaint was dismissed.

Briefly stated, facts of the case are that plaintiffs Sadhu Singh and others had brought a suit for grant of permanent injunction against defendants Shivnandan Lal and others on the averments that they are co-sharers in joint possession of 1/2 share of land measuring 69 kanals 1 marla situated within revenue limits of village Bhucho Kalan, Tehsil and District Bathinda; they have inherited this land from their ancestor Narain Singh; the defendants are other co-sharers in joint possession of remaining 1/2 share of the land; such land is still joint and has not been formally partitioned; the defendants threatened to dispossess the plaintiffs from the suit land to carve out a colony and raise construction on specific and more valuable part of the joint khata of the land without getting it partitioned. Feeling threatened, the plaintiffs had brought a suit for grant of permanent injunction. In such suit they had also filed an application for grant of ad interim injunction.

On getting notice of suit as well as application for ad interim injunction, the defendants No.1 to 3 by filing reply submitted that plaintiffs had no concern with the suit land and Narain Singh son of Baggu Singh was unmarried and issueless and was not heard off after 1911-12; Raj Kaur had sold the suit land to different persons during her life time; the mutation got sanctioned by the plaintiffs was

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not binding on the defendants; the plaintiffs had earlier filed a suit for declaration and permanent injunction, which was withdrawn by them on 19.7.2012 without obtaining permission to file fresh suit on same cause of action.

Whereas defendants No.4 and 5 by filing reply to the suit as well as application for ad interim injunction denied that the plaintiffs are co-sharers in joint khata of  $\frac{1}{2}$  share on the basis of natural succession from Sh.Narain Singh. According to them, mutation was wrongly sanctioned in favour of the plaintiffs with regard to estate of Narain Singh and a revision petition in that regard is pending before the revenue authorities. The defendants claimed themselves to be owners in possession of the suit property. According to them, they have purchased the suit property from defendants No.1 to 3 and they were raising construction in the colony so carved out after getting due permission from PUDA and other authorities.

After hearing arguments, the trial Court of Civil Judge (Jr.Divn.), Bathinda vide order dated 24.7.2013 had disposed of the application observing that *prima facie* both the parties are established to be co-sharers of the suit property, therefore no injunction can be granted against the co-sharers; that the respondents/defendants being the co-sharers cannot alienate the land more than their share as well

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as specific khasra numbers in the joint khata of land to any person without getting the land partitioned till the final disposal of the suit. Though the respondents/defendants could use the land in their possession in any manner they liked. The application was disposed of accordingly.

However, that order was challenged before District Judge, Bathinda by defendants No.4 and 5 by way of filing CMA/50/2014, by defendants No.1 to 3 by way of filing CMA/156/2014 as well as by Kewal Krishan and Amra Devi other co-sharers by way of filing CMA/103/2015. All the Civil Appeals were assigned to Additional District Judge (Fast Track Court), Bathinda, which were allowed by her vide order dated 8.7.2015 and the impugned order dated 24.7.2013 passed by the trial Court was set aside and application for grant of ad interim injunction filed by the plaintiffs was dismissed, which left the plaintiffs aggrieved and they have filed CR-5900-2015, CR-5901-2015, CR-5999-2015.

Notices of the petitions were issued to the respondents/defendants, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Ad interim injunction dealt with by Order 39 Rules 1 & 2

CPC is a discretionary equitable relief, which is to be granted by the

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Court considering all facts and circumstances including the conduct of the parties and no person can claim this relief as a matter of right.

Three necessary ingredients, which are required to be taken into consideration in such type of cases, while determining the entitlement of a plaintiff for grant of ad interim injunction are, as to whether the plaintiff has got a good prima facie case in his favour; whether balance of convenience lies in his favour and whether the plaintiff would suffer irreparable loss or injury in case of denial of ad interim injunction. All these ingredients must be there conjunctively and if one of them is missing, then that seriously affects the case of plaintiff for grant of ad interim injunction. At the same time for making out a case for grant of ad interim injunction, a person approaching the Court must come to the Court with clean hands, disclosing all the material facts and if such person is found to conceal any material fact and make misrepresentation that would result in denial of ad interim injunction. Furthermore, if a Court below exercise the discretion of grant or refusal of ad interim injunction in a judicious manner, then such order is not to be lightly interfered with.

When the present case is examined on touchstone of such proceedings, it comes out that the petitioners are feeling unnecessarily aggrieved. The trial Court has specifically observed that the parties are co-sharers in the suit property and that no

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injunction can be granted against the co-sharers; the respondents/defendants cannot alienate the land more than their share as well as specific khasra numbers in the joint khata without getting the land partitioned. However, no injunction had been granted in favour of the plaintiffs. The application for grant of ad interim injunction was simply disposed of by making such observations. It has come on record that earlier the plaintiffs had brought a suit for declaration and permanent injunction, which they had withdrawn. The plaintiffs are claiming themselves to be co-sharers in the joint land. The proper remedy for them was to approach the revenue authorities seeking partition getting their share partitioned, if they had any apprehension against the defendants. The trial Court had specifically observed that no injunction can be granted against the co-sharers.

The First Appellate Court has observed that the plaintiffs have based their case mainly on the mutation No.18381 sanctioned on 16.11.2011 in their favour on the basis of inheritance. The defendants are co-sharers in the suit land, since their ancestors had purchased the same from Raj Kaur, who had sold the whole land during her life time to different persons since the other co-sharer Narain Singh, who was unmarried and issueless had left the village before year 1911-12 and was not heard off thereafter. Though some

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proprietors of Patti Bhullar had challenged the sales made by Raj Kaur in the year 1957 by filing a civil suit, however said suit was dismissed. The mutation sanctioned in favour of plaintiffs is still under challenge and they are said to have got it sanctioned on the basis of an affidavit only without showing that how they are connected with Narain Singh. Learned Additional District Judge (Fast Track Court), Bathinda has observed that Commissioner, Faridkot Division, Faridkot has mentioned in his order that pedigree table produced by the present plaintiffs appeared to be illegal, null and void as it was not based on any concrete and convincing evidence. Therefore, the present plaintiffs could not be said to be legal heirs of Narain Singh and order passed by Collector First Grade and Collector, Bathinda had been set aside. Though its operation has been stayed by the FCR. Therefore, the title of plaintiffs to the suit land is in serious doubt and they cannot be said to have a good prima facie case more particularly when as per the decree passed by the Civil Court, the challenge to the sales made by Raj Kumar had been rejected.

Learned Additional District Judge (Fast Track Court), Bathinda by giving sound reasoning has come to the conclusion that the essential ingredients for grant of ad interim injunction were not there. The title of the plaintiffs to the suit land was in serious dispute.

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The previous suit for declaration and permanent injunction bearing Civil Suit No.258 dated 13.9.2006 having been withdrawn on 19.7.2012 from the Court of Civil Judge (Sr.Divn.), Bathinda without obtaining any permission to file a fresh one, they could not possibly file a fresh suit on the same cause of action. The plaintiffs are not shown to have mentioned this fact in their pleadings making an attempt to conceal material fact from the Court, in that way disentiing themselves to the discretionary relief of ad interim injunction.

The law is well settled that revisional jurisdiction of this Court is quite limited. This Court is to intervene only if the order passed by the Court below is perverse, arbitrary or in gross violation of settled legal principles or in contravention of the legal provisions. The order passed by Additional District Judge (Fast Track Court), Bathinda is certainly not of that type. No interference of this Court while exercising revisional jurisdiction is called for.

Learned counsel for the respondents has referred to authorities *Jangir Singh Versus Naranjan Singh and others, 2015(1) PLJ 190, Sakahari Parwatrao Karahale and another Versus Bhimashankar Parwatrao Karalhe, 2002(9) SCC 608, SatnamSingh Versus Gursher Singh and others, 2017(1) ICC 882* and *Mukesh Kumar and others Versus M/s Saini Developers and*

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**Promoters Pvt. Ltd. and others, 2019(2) PLR 708** in support of his contentions.

Finding no merit in CR-5900-2015, CR-5901-2015, CR-5999-2015, the same stand dismissed.

Now taking up CR-5898-2017, which has been filed by the defendants No.4 and 5/revisionists for setting aside of the impugned order dated 16.2.2017 passed by Civil Judge (Jr.Divn.), Bathinda whereby their application under Order 7 Rule 11 CPC for rejection of plaint was dismissed.

After hearing the rival contentions, I find that defendants No.4 and 5 in the suit, who had filed the application under Order 7 Rule 11 CPC, which was dismissed and who are revisionist before this Court had sought rejection of the plaint for the reason that respondents had earlier filed Civil Suit No.258 dated 13.9.2006 decided on 19.7.2012 for declaration and permanent injunction, which was withdrawn by them from the Court with permission to file the same on the same cause of action. Therefore, the present suit without seeking declaration of title and possession was barred in view of Order 23 Rule 1 CPC and was also barred by principle of res judicata in view of judgment and decree passed by the Court of Sh.J.P. Gupta, the then Civil Judge (Sr.Divn.), Ferozepur dated 24.11.1958 as well as judgment and decree in first appeal decided by

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Sh.Chetan Dass Jain, the then Additional District Judge, Ferozepur dated 21.12.1959. The plaintiffs had concealed all these facts while filing the suit.

The application was resisted by the plaintiffs praying for its dismissal.

The trial Court had dismissed the application with following observations:-

5. *The first contention of the applicants is that the respondents had earlier filed civil suit No.258 dated 13.9.2006 for declaration and permanent injunction and the same was withdrawn by the respondents from the Court without permission to file the same on the same cause of action. So, it is contended on behalf of the applicants that the instant suit is barred under Order 23 Rule 1 CPC. On the other hand, the learned counsel for the respondents has argued that the earlier suit was withdrawn by the respondents stating that they would file fresh suit if needed and in view of that statement the suit was dismissed as withdrawn. It is contended on behalf of respondents that they are at liberty to file the fresh suit as the Court impliedly gave consent to file fresh suit on the same cause of action. The ld. Counsel for the*

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*respondents has drawn attention of this Court to the case titled **Narinder Nath & others Versus Government of Jammu & Kashmir & others 1999 (1) PLR 538** wherein it is held -*

*Civil Procedure Code, Section 11 – Res-judicata – Estoppel – Application for eviction of tenant on ground of bonafide requirement – Statement of counsel “I withdraw my application as there is technical defect in the application. I will file fresh application” - Court recorded the order “In view of statement of the counsel for the applicant, the application is dismissed” - Both the statements if read together would show that petitioner was granted permission to file fresh petition on same cause of action. So, in view of the aforesaid mandate of the Hon'ble Punjab & Haryana High Court it is clear that the present suit is not barred under Order 23 Rule 1 of CPC. The next assertion of the applicants is that the respondents have not complied with the provision of Order 7 Rule 1(J) as they have not disclosed the earlier litigation. However, I am unable to subscribe to the arguments raised by learned counsel for the applicants as non-compliance of this provision does not lead to*

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*rejection of plaint.*

The order in question can certainly be not termed as perverse or arbitrary. The objections raised by the revisionist can be taken care of during the trial at the time of final disposal.

Learned counsel for the respondents in this revision petition referred to authorities **Kartar Singh (Now Deceased) Thru Lrs Jaswant Singh and Kulwant Singh Versus Harpal Kaur & Ors., 2018(4) PLR 439, Lal Singh Versus Ajit Singh and another, 2008(3) RCR(Civil)650, Surjan Singh Versus Amarjit Singh, 1993(1) RRR 521, Narinder Nath Versus Government of Jammu and Kashmir, 1999(1) RCR(Rent)497 and Sucha Singh Sodhi (D) Thr. LRs Versus Baldev Raj Walia & Anr., 2018(2) RCR(Civil) 782** in support of his contentions.

Finding no merit in the CR-5898-2017, the same stands dismissed.

9.12.2019  
Brij

(H.S.MADAAN)  
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No