

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

**CR No.6614 of 2015(O&M)
Date of Decision: 13.02.2019**

Navneet Kumar

.....Petitioner

Versus

Mandir Murti Shree Radha Krishan Bawna Wala

.....Respondent

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

Present:Mr. S.K. Jain, Advocate
for the petitioner.

Mr. V.D. Sharma, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner is aggrieved of the order dated 11.09.2015 passed by Civil Judge (Senior Division), Yamuna Nagar at Jagadhri vide which order dated 12.08.2015 was modified and fresh warrant of possession was issued.

[2]. Plaintiff/respondent Mandir Murti Shree Radha Krishan Bawna Wala through its Mohitmins filed a suit for possession against the defendant/petitioner in respect of land measuring 4117 sq. yards comprised in khewat No.764, khatoni No.985

min, khasra No.102/392 min situated in the revenue estate of village Jagadhri as per *jamabandi* for the year 1999-2000 after removing the superstructure raised by the defendant. Consequential relief of permanent injunction was also sought thereby restraining the defendant from raising any kind of construction in the suit property and also from alienating the land.

[3]. The case set up by the defendant was that he was lessee on the basis of two lease deeds dated 11.10.1990 (Ex.D5) and 22.10.1990 (Ex.D7). The land measuring 1635.89 sq. yards was the subject matter of aforesaid lease deeds, the possession of which was given to the defendant.

[4]. Trial Court while discussing the evidence under issues No.1 and 2, observed the following in para Nos.20, 21, 22 and 23:-

“20. Moreover, in a site plan Ex.P2 attached with the report, a detail of the unauthorized occupants has been given, wherein it is clearly mentioned that possession of defendant over 4117 square yard land is unauthorized. It is established from lease deed dated 11.10.1990 Ex.D5 and 22.10.1990 Ex.D7 that defendant is chakotedar over the land measuring 1635.89 square yard only but defendant has not able to show how he had occupied 4117 square yards land. It is not the case of defendant that an area 316 square yard leased out to Parveen Kumar has been taken by

defendant under any agreement nor possession of Parveen found on any portion of khasra No.102/39/2, that is why plaintiff did not make him party. It is clear that possession of the defendant on some portion i.e. 2482 square yard (4117-1635) over the suit land is totally unauthorized and illegal and is liable to be returned to the plaintiff.

21. Learned counsel for the defendant has contended that defendant is chakotedar and plaintiff is not entitled to get the possession of the specific portion of land but this submission is devoid of any merit because plaintiff sought possession of the land, which is occupied by the defendant illegally and unauthorizedly.

22. As far as taking possession of the specific portion of the land is concerned, it would be possible by way of partition of the suit land. Even otherwise, defendant is bound to deliver the actual and physical possession of the land upon which he is continuing in possession for the last so many years.

23. As far as contention of learned counsel for defendant that suit for possession of the plaintiff is not maintainable is devoid of merit. In the jamabandi, suit land has been shown as agricultural land thus, plaintiff has rightly filed the suit for possession with regard to the suit land which has been illegally and unauthorizedly encroached by the defendant. If defendant had raised any construction over the suit land is totally illegal and defendant cannot take the advantage of the same, thus, he is liable to vacate the suit land i.e. 2482 square yards and to hand over the same to plaintiff after removing the construction. Both

these issues are, thus decided in favour of the plaintiff.

[5]. Evidently, the plaintiff was entitled to the relief qua 2482 sq. yards i.e. 4117-1635. In para No.22, it was observed by the trial Court that the plaintiff can take possession of specific portion only by way of partition of suit property. It is the case of the defendant that he has already constructed boundary wall over his land measuring 1635.80 sq. yards which was leased down to him vide lease deeds dated 11.10.1990 and 22.10.1990.

[6]. The suit of the plaintiff was partly decreed. The decree in question reads under:-

“It is ordered that the suit of the plaintiff partly succeeds and same stands partly decreed with costs. Therefore, a decree for possession of land measuring 2487 square yards comprised in khewat No.764, khatauni No.985 min, khasra No.102//39/2 min, entirely owned by plaintiff situated within the revenue estate of village Jagadhari, Hadbast No.400, Tehsil Jagadhari, District Yamuna Nagar, after removing superstructure raised by the defendant wrongly and illegally is hereby passed in favour of the plaintiff against the defendant. The defendant is restrained from raising any type of construction in the suit land or to alienate the same, in any manner, whatsoever.”

Evidently, the suit was decreed for the land measuring 2487 sq. yards after removing the superstructure raised by the

defendant.

[7]. Perusal of the lease deeds executed by Rakesh Garg and Kamlesh Gupta in favour of the defendant would show that one plot with measurement East:71 feet, West: 71 feet, North:132 feet, South: 132 feet, having boundaries East: Ravindera Chhachrauli, West: Cold Store, North: Duggal Metal, South: Factory M/s V.K. Industries in khasra No.102//39/2/1 situated within Municipal Council, Jagadhri was subjected to lease in favour of the defendant and one plot with dimensions i.e. East: 28-2" plus 15-10", West: 43-6", North:132 feet, South:116-6" plus 17 feet, having boundaries East: Shed Owner Bimal and Chhachrauli Road, West: Duggal Cold Storage, North: Property of Chakotedar Navenet Kumar, South: Building of Marina Metal Industries bearing khasra No.102//39/2 situated at Mauja Jagadhri within the municipal limits was subjected to lease deed.

[8]. At the time of filing of the suit, the plaintiff filed site plan (Ex.P2), perusal of which would show that the plaintiff has not earmarked any specific area of 2487 sq. yards in his possession. The area of 1635 sq. yards has also not been specifically earmarked by the plaintiff.

[9]. In view of above, it can be appreciated that the plaintiff as well as lessor of the respondent were co-sharers in total land

measuring 4117 sq. yards out of which share of the plaintiff was 2487 sq. yards and share of lessor of the respondent was 1635 sq. yards. Both were co-sharers. Partition has not taken place. The grievance of the petitioner appears to be that the defendant has constructed front portion of the plot by raising boundary wall. Concept of co-sharership if applied, to the fact of the case on the strength of ratio laid down in **Sant Ram Nagina Ram Vs. Daya Ram Nagina Ram, AIR 1961 Punjab 528, Bhartu Vs. Ram Sarup, 1981 PLJ 204 (Full Bench)** and **Ram Chander Vs. Bhim Singh and others, 2008(3) RCR (Civil) 685 (Full Bench)** would give rise to the situation that the possession of the petitioner as well as the respondent would be subject to final partition between the parties by metes and bounds. No plea of ouster has been taken so as to dislodge any of the co-sharers in terms of exclusive possession. Even if, the respondent is found to have constructed the boundary wall, such possession would always be subject to final partition of the property between the parties by metes and bounds.

[10]. In view of aforesaid legal position, it can be seen that issuance of warrants for taking possession by way of removing construction would not be in consonance with concept of co-sharership. The course open to the decree holder/respondent would be to seek partition with the petitioner viz-a-viz total land

measuring 4117 sq. yards in which petitioner is co-sharer to the extent of 1635 sq. yards and decree holder/respondent is co-sharer to the extent of 2487 sq. yards. In terms of site plan filed with the suit, the plaintiff is not proved to be in exclusive possession over 2487 sq. yards, nor such area has been earmarked in the site plan Ex.P2 on record.

[11]. For the reasons mentioned hereinabove, I deem it appropriate to accept this revision petition. Impugned order dated 11.09.2015 passed by Civil Judge (Senior Division), Yamuna Nagar at Jagadhri is thus set aside. Normal consequences to follow.

13.02.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No