

CRM-M-49506 of 2017

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

CRM-M-49506 of 2017
Date of Decision: 13.02.2019

Major Singh

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. R.S. Bains, Advocate, for the petitioner.
Mr. Amandeep S. Gill, DAG, Punjab.
Mr. C.S. Jatana, Advocate, for respondent No.9.

RAMENDRA JAIN, J. (ORAL)

Through instant petition under Section 482 Cr.P.C. challenge has been laid to Report No.10 dated 01.12.2017 (Annexure P-13/T), whereby Station House Officer, Police Station Dayalpura, has filed kalandra under Section 145 Cr.P.C. and requested concerned Sub Divisional Magistrate to refrain petitioner and respondent No.9 from interference in the alleged disputed land and also to appoint receiver.

Learned counsel for the petitioner *inter alia* contends that petitioner has been declared co-sharer on the basis of sale deed Ex.P1, being his stepping into shoes of Ardaman Kaur. Earlier also, possession of the disputed land was taken by the SDM, Rampura Phul, vide order dated 01.07.2016 and handed over the same to Naib Tehsildar, Rampura Phul, as receiver, which was challenged before this Court in CRM-M-27062 of 2016 by wife of the petitioner. During the pendency of said petition, Sub Divisional Magistrate, Rampura Phul withdrew his aforesaid order of attachment and appointment of receiver of the disputed land vide

CRM-M-49506 of 2017

order dated 28.04.2017 (Annexure P-4/T). Consequently, possession was handed over to the wife of the petitioner, namely, Kulwant Kaur. Thereafter, FIR No.69 dated 18.05.2017 under Sections 324, 323 and 34 IPC was registered against various persons working at the behest of respondent No.9, when they tried to interfere into peaceful possession of the petitioner. Subsequently, petitioner was attacked by rival party on 31.05.2017, for which petitioner medico-legally examined himself vide MLR (Annexure P-7). Now, after six months, SHO again adopted the same illegal recourse of recommending to the SDM to take possession of the property and hand over the same to some receiver in connivance with respondent No.9 and her accomplice.

On the other hand, refuting above submissions, learned counsel for respondent No.9 contends that she is in possession of the disputed land vide sale deed dated 28.01.2015, in which petitioner tried to interfere illegally. Therefore, SHO concerned has rightly reported the matter to SDM for passing appropriate order to appoint receiver to maintain peace and harmony between the parties.

Having given thoughtful consideration to the rival submissions, this Court finds that the instant petition merits acceptance for the reasons to follow.

Vide judgment dated 07.11.2006, the Appellate Court held petitioner as co-sharer on the basis of sale deed dated 13.12.1995 (Annexure P-8/T), which is prior to the sale deed of respondent No.9 of the year 2015. Aforesaid judgment has attained finality as no document of its further challenge has been produced by respondent No.9.

CRM-M-49506 of 2017

authorities for partition of joint holding amongst them, which neither petitioner adopted nor respondent No.9.

Earlier also, SDM had appointed Naib Tehsildar as receiver, who, after filing CRM-M-27062 of 2016 by the petitioner, delivered possession to petitioner's wife as petitioner was in jail. Handing over possession of the disputed land to receiver is not a permanent solution as the possession with him cannot be kept indefinitely.

Learned State counsel has submitted that police is going to file final report under Section 173(2) Cr.P.C. against respondent No.9 and her accomplice under Sections 323, 324 and 34 IPC in case FIR No.69 dated 18.05.2017 for causing injuries to the petitioner.

The above fact shows that respondent No.9 and her accomplice, instead of seeking partition, are out and out to oust the petitioner from his legal possession over the disputed portion of the joint holding. As per learned State counsel, possession of the disputed land has been handed over to the petitioner and his wife and sale proceeds of the agricultural produce have also been deposited in the bank account of the petitioner's wife. This fact *prima facie* proves the possession of petitioner and his wife over specific portion of the joint holding.

In view of discussion made above, petition is allowed. Report dated 01.12.2017 (Annexure P-13/T) is set aside with advice to the parties to seek partition.

February 13, 2019
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No