

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CR-4309-2019  
Date of decision: 16.07.2019

Jagdish

...Petitioner

V/s.

M/s. Superb star Promotors Pvt. Ltd. and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: None for the appellants.

Mr. Pradeep Kumar, Advocate  
for respondent No. 3-insurance co.

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**RITU BAHRI, J. (Oral).**

This revision has been filed against the order dated 23.04.2019 (Annexure P-5) whereby appeal filed by the defendant against the order dated 19.01.2019 passed by Civil Judge (Senior Division), Narnaul on an application filed by the plaintiff under Order 39 Rule 1 & 2 CPC, has been allowed.

A perusal of the impugned order shows that petitioner had filed a suit for permanent injunction against respondent No. 1 being a co-sharer in possession over the suit property bearing khewat no. 60 khatoni no. 69, khasra no. 82 measuring 25 kanal 3 marla situated in village Bakhrija, Tehsil Nangal Chaudhary, District Mohindergarh, The defendant's case before the appellate Court was that he had purchased vide sale deed no.1607 dated 26.10.2018 the land measuring 6 Kanal out of khewat no. 60 and possession was given in khasra no. 82 (25-3) and

mutation no. 962 dated 30.10.2018 was sanctioned in this manner. The defendant No. 1 became a co-sharer of possession over the suit property bearing khasra no. 82 (25-3). Since this relief has been sought only against respondent No. 1, he is in possession of this land pursuant to sale deed and mutation as stated above.

In para 12 of the order dated 23.04.2019, the appellate Court has observed that the nature of land of khasra no. 82 is **“Gair Mumkin Pahar”** and as such property is not cultivable. Arisal and Jagdish who are also co-sharer in khewat no. 60 khasra no. 82 alongwith other land of the said khewat have given affidavit dated 12.5.2012 regarding handing over the possession of khasra no. 82 to the defendant no. 1. The defendant no. 1 in order to show his possession, placed on record report of Tehsildar dated 13.12.2018 and as per this report, office, labour room, bathroom, temple, water tank etc. of defendant no. 1 exist over part of khasra no. 82. He has also made an application for appointment of local commissioner on the very first date i.e. on 30.05.2018 to ascertain existing state of affairs on the suit property.

In the case of plaintiff, he has not led any evidence to show that the construction was raised after filing of the suit and has neither even filed an application for appointment of local commissioner nor any photograph regarding the fact that there was no construction at the time of filing of the suit has been shown. Since the nature of the property was gair mumukin pahar and every co-sharer is presumed to be in possession over every inch of the suit land, the appellate Court has held that defendant No. 1 was in possession of suit property and in this backdrop, the petitioner is not entitled to get injunction for restraining the defendant from interfering in the

possession of the plaintiff over the suit property because plaintiff was not prima facie in possession over the suit property.

Learned counsel for the petitioner has vehemently argued that the report of Tehsildar dated 13.12.2018 was procured by defendant No. 1 himself and it was not taken in the presence of other co-sharers.

However even if report of Tehsildar at this stage is to be ignored, plaintiff has not led any evidence to show the possession of the plaintiff as he has neither filed an application for appointment of local commissioner nor any photograph regarding the fact that there was no construction at the time of filing of the suit has been shown. Impugned order does not require any interference as the plaintiff at this stage has not led any evidence to show that he was ever in possession of the property of the land in khasra no. 82. This revision is dismissed. However, the petitioner can lead any other evidence during the trial to show that he is in possession.

**(RITU BAHRI)**  
**JUDGE**

**16.07.2019**

**Divyanshi**

**Whether speaking/reasoned**

**:**

**Yes/No**

**Whether reportable**

**:**

**Yes/No**