

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR No. 5093 of 2019

Date of decision : September 20, 2019

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Phuli Devi

.....Petitioner

Versus

Surender

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Pritam Saini, Advocate for the petitioner.

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RITU BAHRI, J.

The petitioner has come up in the present revision petition against the order dated 23.07.2019 (Annexure P/4), whereby her objections to the execution petition has been dismissed. Vide judgment dated 03/08/2015 (Annexure P-1), the suit filed by Surender respondent-plaintiff (hereinafter referred to as 'the plaintiff') had been decreed and Phuli Devi, petitioner-defendant was directed to hand over the vacant possession of the land measuring 4 Kanal ½ Marla as encroached by her as per demarcation report as well as the site plan as Ex. P5 and Ex. P6.

Counsel for the petitioner has argued that the petitioner/defendant-judgment debtor was a co-sharer along with the plaintiff in Khewat No. 766//686, Khatauni No. 980 02/09/1984 of land measuring 131 kanal, 17 Marla situated at village Petwar and as the land was common land, so without partition, decree holder could not get the possession of any specific number because as per settled law each co-sharer has a right on each and every inch of common land. Since partition proceedings have not been carried out the decree holder could not be given possession of any particular portion of land. Petitioner/defendant-judgment debtor filed an objection petition before the executing court, wherein it was submitted that the present execution petition was not maintainable. The objections filed by the petitioner were dismissed by the executing court.

In the present case, the ownership of the suit land was not in dispute between the parties. The plaintiff was owner in possession of land measuring 23 kanal 19 Marla by virtue of mutation No. 3680 sanctioned on 28th of January 2014 and earlier his mother Smt. Kola was owner who had purchased aforesaid specific killa numbers from its owner Inder Singh etc., comprising in Khewat No. 686//584, Khatauni No. 906 as per Jamabandi for the year 2007-08. The defendant had also purchased

land measuring 36 kanal comprised in the same Khewat and possession of the same was delivered to her and land of both the parties was adjacent to each other. In the year 2014 (Rabi), plaintiff after harvesting his wheat crop in his land went to Delhi and stayed there for about 5-7 days and when he returned on 04/05/2014, he found that defendant had taken possession of the suit land forcibly and illegally and cultivated the same and sown crops in his absence. Thereafter on 06/05/2015, plaintiff moved an application to Tehsildar Narnaund for getting his land demarcated, whereupon Tehsildar Narnaund appointed Sh. Rajender Singh retired Kanungo to conduct demarcation of the land. As per the demarcation report, the defendant had encroached upon the land of the plaintiff. Thereafter on 01/07/2014, plaintiff along with Numberdar of village visited the land of defendant and asked her to remove her illegal possession and to hand over the vacant possession of the land of plaintiff to him whereupon defendant, her sons and husband became furious and threatened to kill the plaintiff. Hence the suit was filed by the plaintiff.

Upon notice defendant appeared and filed written statement while taking objections to the maintainability of the suit. From the pleadings of the parties the following issues were framed by the trial court:

- 1. Whether the plaintiff is entitled for possession of land measuring 4 Kanal, ½ Marla as detailed and described in head note of the plaint? OPP*
- 2. Whether the plaintiff has locus-standi to file the present suit? OPP.*
- 3. Whether the suit is not maintainable? OPD*

The trial court returned a finding on issue No. 1 in favour of the plaintiff that as per the demarcation report and site plan, it stood established that defendant had encroached upon the land of plaintiff to the extent of 4 kanal ½ marla. Although plea of adverse possession has been taken by the defendant in the written statement, however, when defendant appeared in the witness box as DW1 and tendered into evidence her affidavit as Ex. DW1/A, no averment of adverse possession has been mentioned therein by her. Further the plea of adverse possession is to be proved like a fact and defendant has neither disclosed the year month or date since when she is in possession of the land nor this plea has been mentioned in the affidavit, which has been tendered by the defendant in her evidence. As already stated above, nor any evidence has been adduced by the defendant to show her continuous possession in respect of land in dispute for the last 32-33 years. Thus, bald statement of defendant is not sufficient to prove her possession for the last so many years. The suit was

decreed by the order dated 03/08/2015 (Annexure P-1). Hence, the finding given as per the demarcation report and site plan that the defendant had encroached upon the land which was in possession of the plaintiff has attained finality. Objection taken by the defendant/judgment debtor that she was a co-sharer is liable to be rejected as the main plea taken by the defendant in the written statement was that she had become owner in possession of the same by way of the adverse possession but no evidence was led to show the plea of adverse possession. As per the site plan, defendant was found to be encroaching land of the plaintiff. Another important point for consideration is that on the application dated 06/05/2015 made by the plaintiff, the demarcation was conducted on 29/05/2014. Hence, on the date of application, the plaintiff was in possession of the suit property and even if they were co-sharers without partition they could not be dispossessed and they had a right to be given back the possession. Moreover, the plaintiff was in actual physical possession of the suit land and he was entitled to protect the portion of land in his possession without seeking partition proceedings. Reference can be made to a full bench judgment passed by this court in **Ram Chander versus Bhim Singh and others 2008 (3) RCR (civil) 685** wherein paragraphs 18 and 19 it was observed as under

18. *It is therefore, apparent that a co-owner has an interest in the entire property and also in every parcel of the joint land. When a co-sharer alienates his share or a part thereof in the joint holding what he brings forth for sale is what he owns i.e a joint undivided interest in the joint property. A sale, therefore, of land from a specific Khasra/killa number, forming part of a specific rectangle number, but being a part of a joint khewat, would, in view of the nature of the rights conferred upon a co-sharer, be deemed to be the same of a share from the joint khewat and such a vendee would be deemed to be a co-owner/co sharer in the entire joint khewat, irrespective of the artificial divisions of the joint land into different rectangles, Khasra and killa numbers.*

19. *Another attribute of joint property is that where a co-owner in possession of a specific portion of the joint holding and recorded as such in the revenue record, transfers any right, title or interest, from the portion in his specific possession, his vendee would be entitled to protect the portion so transferred, without, however, asserting exclusive ownership to the portion so transferred and possessed, till such time as the joint state is not partitioned.*

Hence, in the facts and circumstances of the present case, the plaintiff who was in possession of the suit land before the application made

on 6.5.2015 had a right to be given back the possession of the suit land as defendants had encroached upon the suit land and dispossessed him. Moreover, the defendant is not denying the title of the plaintiff on the suit land as per mutation.

In view of all that has been discussed above, present revision petition is hereby dismissed.

September 20, 2019
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No