

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

102

CR-432-2021(O&M)

Date of Decision : March 01, 2021

SHAKUNTLA DEVI

.....Petitioner

VERSUS

MAMTA DEVI AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Sanjay Verma, Advocate
for the petitioner.

(Through Video Conferencing)

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 12.02.2021 (Annexure P-5) passed by the learned Additional District Judge, Yamuna Nagar at Jagadhri vide which the appeal filed by the respondent was allowed and the order dated 28.9.2020 (Annexure P-4) passed by learned Civil Judge (Jr. Divn), Jagadhri was set-aside and the application under Order 39 Rule 1 and 2 has been dismissed.

The petitioner, who is the plaintiff, had filed a civil suit for permanent injunction restraining the defendants from raising the construction and changing the existing portion and from alienating specific portion of the land measuring 67 kanal 08 marlas without getting

the same partitioned and further restraining the defendants from interfering in the actual and physical possession of the plaintiff as co-sharer over the land measuring 23 kanal 8 marlas by way of raising construction or in any other manner whatsoever without getting the same partitioned.

The learned counsel for the petitioner has submitted that alongwith the present suit, an application under Order 39 Rule 1 and 2 CPC read with Section 151 CPC was also filed which was allowed by the learned Civil Judge (Junior Division), Jagadhari on 28.09.2020. The learned counsel has submitted that out of the total land which came to the share of Ishar Singh, Shakuntla Devi, Ramesh Kumar, Gurmej Kumar and Pala Ram and before the filing of the partition proceedings, the said Pala Ram alienated the land measuring 1 kanal 15 marlas to Meena Devi. Similarly, Ishar Singh also alienated the land measuring 3 kanal 10 marlas to Ganga Devi vide sale-deeds dated 18.7.2013 and 24.8.2015 respectively. In both the sale-deeds, no specific portion was mentioned. Thereafter, the aforesaid Meena Devi sold the land measuring 1 kanal 15 marlas to Mamta-respondent No.1 vide sale-deeds dated 1.9.2014 and 8.8.2017 respectively. Similarly, Ganga Devi also sold the land measuring 84 Sq. yards to Mamta vide sale-deed dated 22.6.2020 and again no specific portion was given in the sale-deed. He submitted that the sale-deeds did not mention any specific portion, the application under Order 39 Rule 1 and 2 CPC was rightly allowed by the learned Civil Judge (Jr. Divn), Jagadhri but on appeal learned Additional District Judge, Yamuna Nagar at Jagadhri has erroneously set-aside the order

passed by the learned Civil Judge(Jr. Divn), Jagadhri.

I have heard the learned counsel for the petitioner.

A perusal of the order passed by the learned Civil Judge (Jr. Divn), Jagadhri would show that the application under Order 39 Rule 1 and 2 CPC has been allowed on the ground that the alienation in favour of respondent No. 1 was made without mentioning of any specific khasra numbers and, therefore, the learned Civil Judge (Jr. Divn), Jagadhri considered it fit to grant interim order since there was no partition of land.

When the aforesaid order was assailed in appeal before the learned Additional District Judge, Yamuna Nagar at Jagadhri, various other factors and factual position came forth and on the basis of the same the learned Additional District Judge, Yamuna Nagar at Jagadhri set-aside the order passed by the learned Civil Judge (Jr. Divn), Jagadhri.

The factors which weighed before the Additional Distt. Judge, Yamuna Nagar at Jagadhri, were that during the pendency of the application, a Halqa Kanungo was appointed as Local Commissioner to bring on record the actual and factual position of the property and the Local Commissioner after demarcating of the property had submitted his report alongwith photographs depicting the actual and factual position existing at the spot. The factual position which has emerged from the pleadings and the documents was that 8 persons including the plaintiff as well as vendors of the defendants, namely, Ishar Singh and Pala Ram were the co-sharers of the land measuring 84 kanal 5 marlas and admittedly three of the co-sharers, namely, Daulat Ram, Sher Pal and

Ram Pal had filed an application for partition of this property against other co-sharers on 24.12.2011. This partition case was decided on 15.03.2016 and *sanad taksim* was prepared on 19.04.2016 wherein land measuring 16 kanal 17 marlas fell in the share of Daulat Ram etc. and the remaining land of 67 kanal 8 marlas fell in the share of Ishar Singh. The co-sharer namely Pala Ram during the pendency of the partition proceedings sold land measuring 1 kanal 8 marlas to Meeni Kumari, who is the vendor of the defendants vide sale-deed dated 18.07.2013 and other co-sharer, namely, Ishar Singh also transferred the land measuring 3 kanal 10 marla to Ganga Devi, who is also the vendor of the defendants vide sale-deed dated 24.8.2015. The aforesaid Ganga Devi and Meena Kumari sold 127 Sq. yards, 65 Sq. yards and 87 Sq. yards of land to the defendants vide sale-deeds dated 1.9.2014, 8.8.2017 and 22.6.2020 respectively. In these sale-deeds, specific portion comprised in plot No. 83 was sold to the defendants. Furthermore, the defendants after purchase of the property in the year 2014, 2017 and 2020 have constructed their residential houses and courtyards in the property and the plaintiff had never objected to the construction earlier. The defendants have also stated that the major portion of the suit property has been converted into plots and specific portion has been sold by the respective co-sharers to the defendants. The learned Additional District Judge, Yamuna Nagar at Jagadhari further observed that the petitioner had not come to the Court with clean hands and therefore, the equitable relief under Order 39 Rule 1 and 2 CPC could not be granted to her.

It was further observed by the learned Additional District

Judge, Yamuna Nagar that a perusal of the sale-deeds dated 18.7.2013 and 24.08.2015 would reveal that Pala Ram and Ishar Singh had sold small portion of 1 kanal 15 marlas and 3 kanal 10 marlas to Meena Kumari and Ganga Devi respectively but no specific portion is shown to have been sold however it is a matter of fact that such a small portion of land was suddenly not meant for sale of agricultural property especially when the plaintiff had also sold specific plots of small area i.e. 4 marlas, 3 marlas and 2 marlas etc. to the vendees and had delivered the exclusive possession thereof and as per the report of Patwari dated 13.7.2020, the defendants are shown to have constructed houses in khasra no. 17/20 and similarly report of Tehsildar dated 11.11.2020 also indicates the possession of defendant over the suit property and the defendants have also placed on record electricity bills of the domestic supply connection issued in the names of the defendants which also fortifies the fact that the defendants have constructed their houses over the property and in fact Local Commissioner had also submitted the report by saying that the defendants have their residential houses over the suit property. Once, the defendants have already raised construction over the suit property and built residential houses and the petitioner never objected the same and had rather acquiesced the same, she could not be entitled to re-agitate the matter at a later stage on the ground that the sale deeds did not show any specific khasra numbers. The learned Additional District Judge, Yamuna Nagar at Jagadhari, therefore, on the basis of those facts allowed the appeal and set aside the order of the learned Civil Judge (Jr. Divn), Jagadhari.

In the facts and circumstances of the present case, partition of the total land had earlier taken place but the partition between the present plaintiff and the predecessor-in-interest of the defendants did not take place. The fact that in the sale deeds, specific portion was not mentioned would not become a ground for issuance of any interim direction to the defendants. The conclusion drawn by learned Additional District Judge, Yamuna Nagar at Jagadhari based on facts and circumstances would hold good in view of the peculiar facts and circumstances of the present case where the land was being sold in small portions for the construction of residential houses as plots and the plot stood constructed by the defendants and they were residing at the same place with an electricity connection which was also supported by the report of Local Commissioner and the Halqa Kanungo and, therefore, the plaintiffs had actually acquiesced to the construction made by the defendants and, therefore, the application filed by the petitioner-plaintiff seeking restraint on the defendants for raising construction over the property and for changing the existing portion of the land would not be sustainable. There is no infirmity in the order passed by the learned Additional District Judge, Yamuna Nagar at Jagadhri while allowing the appeal and setting aside the order of learned Civil Judge (Jr. Divn), Jagadhri.

Consequently, the present petition is hereby dismissed.

March 01, 2021

ajay-1

Whether speaking/reasoned.

Whether Reportable.

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No

: Yes/No