

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

Civil Revision No.1094 of 2021(O/M)
Date of Decision: June 16, 2021

Shingara Singh alias Bahadur Singh

...Petitioner

Versus

Major Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Keshav Pratap Singh, Advocate
for the petitioner.

Mr.Sarju Puri, Advocate
for the respondents.

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HARINDER SINGH SIDHU, J.

Challenge in the present revision is to the order 13.05.2021 (P-7) of the Ld. Additional District Judge, SBS Nagar, whereby, the appeal of the petitioner against the order dated 25.11.2020 of Ld. Civil Judge (Junior Division), SBS Nagar (P-6) dismissing the application of the petitioner filed under Order 39 Rules 1 and 2 CPC was dismissed.

The plaintiff-petitioner had filed the Civil suit for permanent injunction for restraining the defendant-respondents from dispossessing him from the suit property/house, interfering in his possession and from demolishing any part of the suit property comprised in Khata Number 561/669, Khasra No. 143/2(0-15) as entered in the Jamabandi for the year 2015-2016, shown as red in the site plan annexed with the suit. Along with the suit the petitioner had filed an application under Order 39 Rule 1 and 2 for restraining

the defendant-respondents from dispossessing him forcibly from the suit property/house, interfering with his possession and demolishing any part of the suit property.

The case of the petitioner was that the property shown as red, green and yellow in the site plan (P-8) was jointly owned by the petitioner along with his brothers. However the petitioner was in possession of the property shown in red colour in the site plan where he had constructed his house more than 20 years back and since then he was in peaceful and uninterrupted possession thereof. He had also got installed an electric connection and was paying electricity charges. Portion shown in green colour was the part of Khasra No.143/2 and the portion shown in yellow colour was located within the red line of the village and was the joint property of the petitioner and his brothers. Respondents No.1 and 2 (who are the nephew and niece respectively of the petitioner) are raising construction over the yellow and green portions, to which the petitioner had no objection. But they were threatening to dispossess the petitioner forcibly from the property shown in red colour, to which they have no right. Hence the suit.

The case of the respondents on the other hand was that the petitioner had not come to the Court with clean hands. He had concealed about the previous litigation between him and Sohan Singh. The suit was bad for non-joinder of necessary party as Sohan Singh, co-sharer in the property, has not been made party. The petitioner is not in possession over any part of the suit property and the question of dispossessing him did not arise. It had not been pleaded by the petitioner in his plaint that he was in exclusive possession of the suit property.

Ld. Trial Court noticed that as per the Jamabandi placed on record both the plaintiff-petitioner and defendant- respondents were co-sharers in the suit property. To prove his exclusive possession the petitioner had relied on electricity bills, photographs of the house, gas connection, pass book etc. On the other hand to deny the exclusive possession of the petitioner the respondent-defendants had placed on record electricity bills with payment receipts. In the face thereof the Ld. Trial Court concluded that it was difficult to comment on the possession of either side over the suit property.

Moreover the fact that the respondents were raising construction did not tantamount to ouster of the petitioner (a co-sharer). Thereby the Ld. Trial Court did not grant the relief of injunction and dismissed the application. It was however clarified that the defendant-respondents could not claim any benefit or compensation for any construction made by them during the pendency of the suit and the same would be at their own risk and responsibility.

The Ld. Lower Appellate Court affirmed the order of the Ld. Trial Court.

Mr. Keshav Partap Singh Ld. Counsel for the petitioner has argued that the Courts below have misdirected themselves in concluding that the material relied on by the petitioner i.e., the electricity bills in the name of the petitioner, the gas connection and the pass book of the petitioner mentioning the same address do not establish the exclusive possession of the petitioner over the suit property. He further argued that in case the Courts came to the conclusion that it could not be established that the petitioner was in exclusive possession, the Court should have directed the maintenance of status quo.

Mr. Sarju Puri Ld. Counsel for the respondents on the other hand argued that the petitioner had only placed on record the electricity bills in his

name. He had however not showed any receipt of payment in respect of those bills. The respondents had placed on record the receipts of payments of the electricity bills which clearly indicated that the respondents were in possession and not the petitioner. He further submitted that in the plaint exclusive possession of the petitioner is not pleaded. Admittedly both parties are co-sharers. Suit for partition is pending and the final rights of the parties shall be determined at the time of partition. The Trial Court has already held that the respondents shall not claim any benefit for the construction raised by them during the pendency of the case.

Having heard Ld. Counsel, in my view, no case for interference with the orders of the Courts below is made out. Admittedly the petitioners and the respondents are co-sharers in the suit property. The petitioner has nowhere pleaded in his suit that he is in exclusive possession of the suit property. Both the petitioner and the respondents have relied on certain documents to establish their possession. The petitioner had relied on electricity bills, photographs of the house, gas connection, pass book etc. The respondent-defendants had placed on record electricity bills with payment receipts. In the face thereof, the finding of the Courts below that it was difficult to comment on the possession of either side over the suit property cannot be faulted. As the exclusive possession of the petitioner had not been pleaded and not been established there appears to be no ground to interfere with the orders of the Courts below. Moreover the interest of the petitioner has been adequately protected by the observation that the defendant-respondents cannot claim any benefit or compensation for any construction made by them during the pendency of the suit and the same would be at their own risk and responsibility. A suit for partition between the parties is already pending. Their rights and shares would

be determined therein. Thus there is no merit in this revision.

Dismissed.

June 16, 2021

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No