

In virtual Court

CRM-M-45378-2017

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-45378-2017 (O&M)
Date of decision: 26.02.2021

Surinder Jit Singh

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Surinder Sharma, Advocate
for respondents No.6, 7 & 10.

ARVIND SINGH SANGWAN, J.

The short point involved in this petition is *“whether the police officials, in the garb of maintaining law and order qua a property, which is subject matter of two pending civil suits before Civil Court, between two real brothers, can put its own lock and hand over key to MHC of police station, without taking recourse either under Sections 145/146 Cr.P.C. or Order 40 Rule 1 CPC for appointment of a receiver, or such action of police amount to colourable exercise of power, thereby overreaching the powers of Civil Court,*

which has even granted stay in favour of one party.”

Prayer in this petition is for quashing of enquiry report dated 09.08.2017 submitted by the Assistant Commissioner of Police, Central, Jalandhar as well as the order dated 24.08.2017 passed by the Deputy Commissioner of Police (investigation), Jalandhar for Commissioner of Police, Jalandhar and to further hand over the inquiry to an officer not below the rank of I.G. Police outside Jalandhar Range, as the local police authorities are favouring respondent No.10 with regard to a shop in dispute.

Brief facts of the case are that one shop bearing No.EF-62 (B VII/743) situated in Mandi Fanton Ganj, Jalandhar was originally owned by Avtar Singh, who was real paternal uncle of petitioner Surinder Jit Singh as well as respondent No.10 Narinder Pal Singh. Said Avtar Singh bequeathed the shop in favour of his brother late Mohinder Singh by way of the Will, who was father of the petitioner as well as respondent No.10. After the death of Avtar Singh, Mohinder Singh became exclusive owner of the shop on the basis of Will, which was upheld in a judgment and decree dated 03.10.1980 passed by the Sub Judge, Jalandhar.

Later on, by way of registered Will dated 12.06.1989, Mohinder Singh bequeathed the shop in favour of his wife Mohinder Kaur (mother of the petitioner as well as respondent No.10). Since part of the property was on rent with M/s Aggarwal Brothers, Mohinder Kaur filed a petition for ejectment, in which she had succeeded and the possession was handed over to her as per order of this Court on 31.10.2013. Thereafter, Mohinder Kaur became owner in exclusive possession of the building. It is further case of the petitioner that on

25.08.2014, mother of the petitioner Mohinder Kaur sold the property to the petitioner, as it required reconstruction. Total sale consideration was Rs.1.00 crore. The petitioner paid Rs.40 lacs as earnest money by way of a cheque and two sale deeds were registered on 16.12.2016 for Rs.50 lacs on payment of stamp duty of Rs.4.50 lacs and fee of Rs.1,05,300/- and the second sale deed was registered on 03.07.2015 for a consideration of Rs.50 lacs bearing equal stamp duty and fee. The petitioner claimed to be owner of the entire property in dispute. Thereafter, the sale consideration was kept in an FDR by mother of the petitioner and she enjoyed the interest till her death in the year 2020. It is further stated that after the earnest money was paid, the property was demolished and reconstruction started in the year 2014 and respondent No.10 started interfering in the construction being raised by the petitioner, who was given possession at the time of payment of earnest money. The petitioner, thereafter, filed a civil suit bearing No.2370/2014 praying for a decree of permanent injunction to restrain respondent No.10 from interfering in the possession. The Civil Court, vide order dated 04.11.2014, allowed the application by making the following observations: -

*“...So, plaintiff is having a prima-facie case in his favour. Moreover, the balance of convenience is also in favour of plaintiff as if the defendant is not stopped from interfering into the construction being carried out by plaintiff, it will cause an irreparable loss to the plaintiff. So, all the three ingredients for granting injunction are fulfilled in the present case. **“Hence, the defendant No.1 is restrained from interfering into the***

construction work being carried out by the plaintiff in the property in question till further order...”

It is further stated that the petitioner, thereafter, completed the construction after one year. In the meantime, respondent No.10 filed a suit for declaration, No.2541 of 2014, to the effect that he and defendants (five in number), namely Mohinder Kaur, petitioner Surinderjit Singh, Manmohan Singh, Baljit Kaur and Bhupinderjit Singh are joint owners in possession to the extent of 1/6th share in the property. It was further prayed that the Will dated 12.06.1989 executed by Mohinder Singh in favour of his wife Mohinder Kaur (mother of the plaintiff and defendants No.2 to 5) be set aside.

In an application filed by respondent No.10 regarding alienation of the property at the hands of the defendants, the Civil Court, on 21.07.2015, passed the following order: -

“...As such, ad-interim injunction regarding this effect cannot be granted at this stage when the plaintiff has himself admitted the fact that defendant No.1 had already executed an agreement to sell in favour of defendant No.2 selling a specific portion of the suit land. Defendants have pleaded that plaintiffs have filed the present suit despite having knowledge about the fact that defendant No.1 has executed one agreement to sell in favour of defendant No.2 in respect of one shop and only when defendant has raised construction, plaintiff is seeking injunction to indulge the defendants in litigation and has come up with the present suit.

“Both parties are in agreement upon the point that suit land is in

possession of the defendant No.2 and moreover defendant No.2 has produced on record one certified copy of stay order obtained by him in a separate suit filed against the plaintiff titled as “Surinderjit Singh Vs. Narinder Pal Singh & other”, having Case No.2370/2014, instituted on 04.11.2014, pending in the court of Sh. Amardeep Singh, PCS, Civil Judge (JD), Jalandhar, wherein stay has been granted in favour of defendant No.2 and plaintiff in this case has been restrained from creating any hindrance or interfering in the construction being raised upon the suit land. Since, defendant No.2 has already having a stay order passed by the competent court against the plaintiff, as such no contrary injunction can be granted against the defendant in the present suit regarding construction in respect of the same property.

Thus, in view of the observation made here-in-above, ad-interim injunction sought by the plaintiff against the defendant No.1 cannot be granted at this stage as he has failed to show any prima facie case in his favour.

Accordingly, the present application u/o 39 rule 1 & 2 CPC filed by the plaintiff stands disposed off, being dismissed.

However, it is made clear that any observation made in this order, shall have no effect on the final decision of the case on merits.”

Thereafter, the petitioner moved another application in Civil Suit

No.2370/2014 filed by him, seeking to restrain respondent No.10 (defendant No.1 in that suit) from interfering in his possession. The Civil Court, vide order dated 13.11.2015, made the following observations: -

“...As both the parties are claiming their exclusive possession over the suit property and are prima facie co-sharers. So in order to avoid any multiplicity of proceeding and to preserve the suit property the Court directs both the parties to maintain status quo the suit property till the pendency of proceedings. However, any observation made while deciding the above application shall have no direct bearing on the merits of the case”

The suit is pending, as it is stated that evidence is being recorded.

The petitioner filed a Civil Appeal No.348/2015, challenging the aforesaid order dated 13.11.2015, praying for ad-interim stay instead of status quo, claiming himself to be in possession, however, the same was dismissed on 07.01.2017, upholding the order of status quo dated 13.11.2015 regarding possession and construction over the suit property.

Learned counsel for the petitioner submits that in the meantime, the petitioner gave a complaint to the police against respondents No.6 & 10 and FIR No.251 dated 25.12.2015 under Sections 448, 511, 506 IPC was registered at Police Station Navi Baradari, District Jalandhar City against Narinder Pal Singh and Inderjit Singh, as they had illegally locked the shutter of the shop in dispute. It is further submitted that even another complaint was filed by the petitioner against respondent No.10 and others, in which, vide order dated 08.03.2017, the JMIC summoned him to face the trial under Sections 448, 34

IPC and the complaint is pending. Learned counsel has also relied upon number of complaints given by both the parties against each other before the police.

It is further submitted by learned counsel for the petitioner that the petitioner came in possession of the property in terms of the agreement dated 25.08.2014 and by demolishing the construction, he raised new construction and has shifted his office in the name of Vishal Trader Inpex, where he is doing the business of detergents. It is also submitted that FIR No.251 was registered by the petitioner against respondent No.10, as he was creating hurdles in his business and subsequently, a complaint was also filed, as despite the complaints made by the petitioner and his mother Mohinder Kaur that respondent No.10 along with his brother-in-law is trying to forcibly take the possession but no action was taken.

Learned counsel for the petitioner has also filed the written synopsis and submits that initially, injunction was granted against respondent No.10 on 14.11.2014 and after completion of the construction, when respondent No.10 started interfering in the possession, status quo was granted on 13.11.2015. It is submitted that respondent No.10 never challenged the initial order dated 04.11.2014, vide which the petitioner was granted permission to raise construction, which itself shows that the petitioner was given the possession of the property by his mother Mohinder Kaur, who became owner of the property after death of her husband Mohinder Singh. It is further submitted that respondent No.10 became dishonest on completion of the construction after 01 year, when the order of status quo was passed on 13.11.2015. It is next argued that respondent No.10, in his suit filed before the Civil Court, has only

prayed that he be declared joint owner in possession to the extent of 1/6th share and never claimed that he is in exclusive possession of the property in dispute, which was re-constructed by the petitioner. It is also argued that in this suit, the Civil Court initially declined the injunction regarding the alienation vide order dated 21.07.2015, however, in the appeal, the same was modified to maintain status quo regarding alienation.

Learned counsel for the petitioner has further submitted that during her lifetime, Mohinder Kaur, mother of the petitioner and respondent No.10, from 2014 till her death in 2020, she had been deposing in favour of the petitioner and giving applications to the higher authorities about the intention of respondent No.10, who was trying to take forcible possession of the property. It is next submitted that in an enquiry conducted by the police, on 18.06.2015, mother of the petitioner made the following statement: -

“Statement of Mohinder Kaur widow of Late S. Mahinder Singh, resident of House No.830, Urban Estate, Phase-2, Jalandhar.

Stated that I am resident of aforesaid address, I have sold the property i.e. Shop No.EF-62, (Property No.BVII/743) area measuring 14’x2”x87’-0” which is situated at Mandi Fenton Ganj, Tehsil and District Jalandhar to my son Surinder Jit Singh for Rs.1 crore. This property was received by me on the basis of Will executed by my husband and upheld. Out of sale consideration, Rs.40 lacs received as earnest money through cheque, Rs.60 lacs to be received at the time of registration of sale deed. The possession of the shop in question is given by me to my

son at the time of agreement. In this regard, there is an agreement between both the parties and I am bound by that agreement.

Statement read over and understood properly.

Sd/- 18.6.15

Mohinder Kaur.

ASI

Malkeet Singh,

Navi Baradari, Jalandhar

18.6.15”

It is further submitted that Mohinder Kaur was the most natural witness, who succeeded the property from her husband Mohinder Singh and has unequivocally stated that she has given the possession to the petitioner being her son, who had purchased the same. Learned counsel has relied upon another statement made by Mohinder Kaur, recorded by one Veer Singh, the Investigating Officer, wherein she reiterated her earlier version that respondent No.10 and his son-in-law have forcibly put the lock on the shop in dispute, wherein the goods belonging to the petitioner were lying: -

*“Statement during enquiry recorded by police of Mohinder Kaur
Statement of Mohinder Kaur wife of Late S. Mahinder Singh,
resident of House No.830, Urban Estate, Phase-2, Jalandhar,
aged about 81 years.*

Stated that I am resident of abovesaid address and I am old lady. My husband Mahinder Singh executed a Will of Shop No.EF-62, Mandi Fenton Ganj, Jalandhar in favour of my. In this shop, M/s Aggarwal Brothers are the tenants and I have taken

possession from M/s Aggarwal Brothers on 31.10.2013 through court. This shop was in dilapidated condition and could fall at any time. About this shop, I discuss with my all sons. My sons suggested that I should sell it off and as such, accordingly I entered into an agreement to sell this shop with my son Surinderjit Singh and I give him authority to demolish the said building and reconstruct the new building. The total value of the said building was Rs.1 crore. I received Rs.40 lacs as advance through cheque out of total sale consideration of Rs.1 crore from Surinderjit Singh. After this, Surinderjit Singh demolished the said building and started raising new construction. When Surinderjit Singh was reconstructing the said building upto the level of construction of first floor. At that time, my elder son Narinderpal Singh alongwith his son in law Inderjit Singh (Sonu) and father in law-Ravinder Singh came at my house and asserted that you have sold this building and asked about their share. Then I told them that I did not give any share to anybody in my life time and I received the entire consideration in money deposit in bank or other government agency on interest or any other company for my livelihood. I nominate all in equal share of all deposit. These persons became angry with me after listening my opinion and told me that you have taken Rs.40 lacs as advance and they threatened me that we will take possession forcibly and then went away. This happened in November, 2014. During this period my son Narinder Pal Singh

filed a civil suit against me and challenged the Will in which application under Order 39 Rule 1 & 2 CPC was dismissed. Before this, my son Narinderpal Singh and his son in law Inderjit Singh (Sonu) in the absence of my son Surinderjit Singh with some musclemen broke open the lock of the shop and try to take the illegal possession. The goods lying in the shop belonging with Surinderjit Singh so I see the said possession I got registered the sale deeds of half share portion in favour of Surinderjit Singh as per agreement and the balance sale deed of half portion of said building is still due. My son Narinder Pal Singh and his kuram Ravinder Singh and son in law Inderjit Singh (Sonu) forcibly put their locks on the said shop. The good lying in the shop belonging with Surinderjit Singh so said persons violated the law. Appropriate action be taken against them as per law. I am old lady. Save my life and my property. I have heard my statement which is correct.

Sd/-

Mohinder Kaur.

Attested

Veer Singh

Investigating Officer”

Learned counsel for the petitioner has next argued that there is no challenge to the agreement to sell executed between the petitioner and his mother Mohinder Kaur, which was followed by two registered sale deeds, in which Mohinder Kaur and the petitioner had appeared as vendee and vendor

and their digital photographs were taken by Sub Registrar, while executing the sale deeds. It is further submitted that the sale deeds being registered documents carry a presumption in favour of the petitioner. Learned counsel has also relied upon certain documents, which are exhibited before the Civil Court, to show that the petitioner had purchased the building material, while raising the construction, the payment of electricity bills, which is in his name, etc. and also the house tax return for the intervening period showing him in possession and has submitted that all the documents prove that the petitioner was in possession of the property, which stands transferred in his name.

It is worth noticing that at the time of issuance of notice of motion on 23.01.2018, it was contended by the petitioner that respondents No.6 & 10 are having no title to the property in dispute, as the property was initially owned by Avtar Singh, who bequeathed the same in favour of Mohinder Singh, father of the petitioner and devolved upon Mohinder Kaur, mother of the petitioner and there was a settlement between the petitioner and respondent No.10, who handed over the keys along with a cheque for damages caused to property of the petitioner. It is further submitted that cheque dated 24.06.2017 was dishonoured, though it was settled that on receiving the amount, the petitioner will withdraw his police complaint. Learned counsel has also relied upon the joint statement of both the brothers dated 27.06.2017, wherein it was admitted that on one side of the shop, lock of the petitioner is affixed. Learned counsel has further placed reliance on some photographs to submit that shop in question is newly constructed and a board Vishal Trader Inpex belonging to the petitioner is fixed at the spot.

Learned counsel for the petitioner has next submitted that on the complaints given by the petitioner, the police has conducted two inquiries, holding that both the parties are claiming their possession over the property and the petitioner is claiming that property belonging to him has been taken away by private respondent and it was recommended by Assistant Commissioner of Police, Central, Jalandhar that no action is required, as the matter is pending before the Civil Court. It is further submitted that lock put by respondent No.8, a police official, is, in fact, under the protection of the police and enquiry has been wrongly conducted. It is also submitted that even a complaint was given by the petitioner to Deputy Commissioner of Police (Investigation), Jalandhar, who conducted the inquiry on behalf of the Commissioner of Police, Jalandhar regarding the allegations against ASI Simarjit Singh and Inderjit Singh. It is held that ASI Simarjit Singh, for the purpose of resolving their dispute and for awaiting decision of the Civil Court, has put the lock on the shop. The operative part of the findings is reproduced as under: -

“...As both the parties claiming their right over the property, ASI Simarjit Singh, for the purpose of resolving their dispute and for awaiting till the decision of the Court, put the locks on the shop and hand over the keys to the head clerk of the police station so that the dispute between the parties be stopped for the compliance of the court order. Apart from this, on 4.7.17 the SHO has informed the Court of Shri Puneet Mohnia, PCS, Civil Judge, Junior Division regarding the dispute prevailing between both the parties and both the parties are restricted to obey the court

order...”

Learned counsel for the petitioner has further argued that in view of above submissions, the police has no authority to put the lock on the property to await the decision of the Civil Court, as it is clear case of overreaching powers of the Civil court. It is next argued that when the petitioner moved CRM-17465-2019, praying for issuance of direction to the police authorities to hand over the keys of the shop, put by ASI Simarjit Singh, it was directed by this Court vide order dated 27.02.2020 to the police to hand over the keys of the shop to a person, from whom the possession was taken, against receipt. It is also submitted that since the petitioner is in possession and the police authorities, while exceeding their jurisdiction, have put the lock without any receipt, further direction was issued on 12.06.2020 to the Commissioner of Police, Jalandhr to ascertain as to who was in possession in terms of the order dated 27.02.2020 and the parties were given permission to lead the evidence to prove, from whom the possession was taken by the police. It is further submitted that even such direction given to the police authorities was not required in view of the fact that the matter was pending before the Civil Court, however, both the parties led their respective evidence to prove that they are in possession of the property.

Learned counsel has next referred to the affidavit filed by the Assistant Commissioner of Police (Central), Commissionerate, Jalandhar along with a copy of the enquiry report dated 15.07.2020, wherein it is stated that statement of five persons namely Sumit Kumar Aggarwal, Deepu, Ram Lubhaya, Ramesh Kumar and Subhash Puri were recorded in this context and a final conclusion was drawn that since 24.05.2015, it is Narinder Pal Singh's

lock, put on the disputed shop and civil case is going between the parties and to maintain law and order, ASI Simarjit Singh has affixed the lock on the disputed shop on 04.07.2017.

It is submitted that this report is factually incorrect, as witness Sumit Kumar Aggarwal is the same old tenant, who was got evicted from the shop in dispute by Mohinder Kaur and therefore, he was not going to depose in favour of the petitioner. It is further submitted that second witness Deepu has stated that shop was constructed by petitioner Surinderjit Singh. Similar is the statement of third witness Ram Lubhaya, who has stated that Surinderjit Singh has pulled down the shop and has got constructed two floored new shop and it was ready in 2017. Fourth witness Ramesh Kumar has stated that Mohinder Kaur had sold the shop to his son Surinderjit Singh, who has demolished the shop and constructed two floored shop and thereafter, Narinder Pal Singh affixed his lock in 2017 and then the police has affixed its lock. The last witness Subhash Puri has stated that Surinderjit Singh has constructed the shop and in 2017, when Surinderjit Singh opened the shop, Narinder Pal Singh, his son-in-law and other persons started fighting with Surinderjit Singh and thereafter, the police has affixed the lock on the shop.

It is further submitted that the report has been prepared in a totally biased manner without referring to the statement of four witnesses, noticed on internal pages No.12 to 15 of report, who have stated that it is the petitioner, who had demolished and reconstructed it and when he opened his business, respondent No.10 has raised a dispute and then the police, without any authority, has affixed the lock through ASI Simarjit Singh.

Similar is the affidavit of Commissioner of Police, Jalandhar, wherein it is stated that ASI Simarjit Singh initiated proceedings under Sections 107, 151 Cr.P.C. and has put his own lock on the shop, which was already locked. It is further stated that ASI Simarjit Singh has put his lock to maintain the law and order.

Learned counsel for the petitioner has also submitted that the petitioner has even filed another application bearing CRM No.12551 of 2020 for directing the police to hand over the keys, however, till date, no action has been taken.

This petition is pending since 2017 and a perusal of the record shows that though different replies have been filed by the police authorities, however, none of the private respondents have filed any reply to controvert the allegations of the petitioner.

Learned counsel for the petitioner has thus submitted that allegations of the petitioner in this petition that he has purchased the property from his mother against payment made by cheque; handing over the possession to him; demolition of shop and its reconstruction by the petitioner from his own money, which took more than one year and then opening of the business by the name Vishal Trader Inpex, are neither disputed nor denied by way of filing counter-affidavits and it is only the police authorities, which are trying to show that Narinder Pal Singh has put his lock over the property.

Learned counsel for respondent No.10 has, however, filed written synopsis and argued that respondent No.10 is co-owner in possession to the extent of 1/6th share of the property and since the Will dated 12.06.1989 is an

outcome of fraud, the civil suit has been filed. It is further submitted that even an application filed by the petitioner seeking direction to respondent No.10 to remove the lock was dismissed by the Civil Court on 13.11.2015. It is also submitted that the petitioner has even filed Civil Revision No.2417 of 2017, challenging the aforesaid order directing the parties to maintain status quo over the suit property and the said petition was disposed of by this Court on 27.08.2018, directing the trial Court to decide the civil suit expeditiously.

It is further submitted that there was no settlement between the petitioner and respondent No.7 and therefore, there was no question of handing over the keys to the petitioner. It is also submitted that even with regard to violation of the order dated 27.02.2020, COCP No.1029 of 2020 was filed by the petitioner, which was dismissed as withdrawn to avail the alternative remedy. Learned counsel has referred to the affidavit of the Commissioner of Police dated 23.07.2020, wherein, in para No.9, it is stated that as per the Inquiry Officer, from 24.05.2015, lock of Narinder Pal Singh was put on the shop in question and civil and criminal litigation are pending between the parties. It is also argued that in the subsequent affidavit dated 13.10.2020 filed by the Assistant Commissioner of Police, it is stated that ASI Simarjit Singh has put lock over the shop in question on 04.07.2017 to maintain law and order situation and from 24.05.2015 to 04.07.2017, the lock put up by Narinder Pal Singh was found existing over the shop in dispute, however, in the entire synopsis, the points raised by the petitioner regarding agreement to sell; handing over the possession to the petitioner by his mother; demolition of shop; reconstruction thereof by own expenses and starting of business are not denied,

in any manner.

After hearing learned counsel for the parties and going through the record, I find merit in the present petition, for the following reasons: -

- (a) It is very strange that ASI Simarjit Singh, on a complaint given by respondent No.10, has put his own lock and handed over the keys to Munshi/Moharrar of the police station to await the decision of the Civil Court without there being any such order by the competent Court.

It is well settled principle of law that in case, there is any apprehension of breaching of peace, the police authorities may initiate proceedings under Sections 145/146 Cr.P.C. and may apply before the competent court for appointment of a receiver to take possession, however, no such procedure has been followed in the case.

- (b) Even the police authorities have not taken recourse to approach the Civil Court, where the two suits filed by the petitioner and respondent No.10 are pending, seeking permission to appoint a receiver as per the provisions of Order XL Rule 1 CPC, therefore, it is a clear case, where the police authorities, in colourable exercise of the powers, have put their own lock on the shop in dispute without there being any order of the Court or authority, just to help respondent No.10. Thus, action of the police clearly amounts to overreaching the powers of the Court, which needs to be condemned strongly.

- (c) Surprisingly, in the enquiry report, which was submitted by the Commissioner of Police, Jalandhar, it is stated that lock over the premises is found of Narinder Pal Singh w.e.f. 24.05.2015, though ASI Simarjit Singh has put the lock on 04.07.2017. It is surprising as to how this finding has been recorded by the Inquiry Officer, certifying a fact even two years prior to putting up the lock, specially when all the four witnesses namely Deepu, Ram Lubhaya, Ramesh Kumar and Subhash Puri, in clear words, had deposed that petitioner Surinderjit Singh has demolished the shop and reconstructed the same. It is only one witness namely Sumit Kumar Aggarwal, who was evicted by mother of the petitioner Mohinder Kaur in eviction proceedings, decided in her favour by this Court had stated that both the brothers are in possession and statement of this witness being highly interested is required to be ignored.
- (d) Needless to say that Civil Court is already seized of the matter and the order of status quo regarding possession or the alienation has been passed, which would interpret that when on earlier occasion, Civil Court granted permission to demolish and reconstruct the shop, it was petitioner, who was in possession of shop. Even in order dated 21.07.2015 passed by the Civil Court in the suit filed by respondent No.10, it is noticed that parties are in agreement that possession is of petitioner, therefore, there was no authority with any of the police official to put its own lock and direct the parties

to await the decision of the Civil Court.

- (e) In all enquiries, there is no reference to statement of mother Mohinder Kaur recorded during the enquiry. She is the natural witness and in her both statements categorically stated that petitioner is in possession of property and respondent No.10 (her other son) is interfering in petitioner's possession.
- (f) The matter can be looked from another angle. In the civil suit filed by respondent No.10, the only claim is that he be declared joint owner in possession to the extent of 1/6th share of the shop. Since mother of the petitioner Mohinder Kaur is already died and two other brothers and sisters are not before the Civil Court, which presupposes that they are not staking any claim to the extent of 1/6th share each, the Civil Court could have allowed the petitioner to use the premises, thereby directing him to deposit mesne profit equivalent to 1/6th share claimed by respondent No.10 with an undertaking from him that in case, the suit filed by respondent No.10 succeeds, he will vacate the 1/6th share immediately. It seems that even the Civil Court in not deciding both the suits, which are pending since 2014, by taking a casual approach, though the same could have been decided in an expeditious manner to avoid financial loss.
- (g) From above discussion, the zeal and zest shown by the police authorities, out of the way, to help private respondents, by exceeding their power and even by overreaching the power and

jurisdiction of Civil Court is apparent on record.

Accordingly, this petition is allowed. Enquiry report dated 09.08.2017 conducted by the Assistant Commissioner of Police, Central, Jalandhar, the order dated 24.08.2017 passed by the Deputy Commissioner of Police (Investigation), Jalandhar as well as the enquiry report dated 15.07.2020 submitted by the Deputy Commissioner of Police (Investigation), Commissionerate, Jalandhar are hereby set aside and these will not be read in evidence by any Court of law.

The Civil Court, where both the civil suits filed by the petitioner and respondent No.10, are pending, is directed to decide both the suits within a period of 09 months from today.

The Commissioner of Police, Jalandhar is directed to remove the lock put by ASI Simarjit Singh forthwith.

This petition is, accordingly, disposed of. The petitioner shall be entitled to costs of Rs.1,00,000/- (one lac) to be paid by the Commissioner of Police, Jalandhar, by way of a demand draft, for unnecessary dragging him into litigation.

It will be open for the Commissioner of Police, Jalandhar to recover the cost from erring police officer/s, after conducting an enquiry in accordance with law.

[ARVIND SINGH SANGWAN]
JUDGE

26.02.2021

vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No