

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

CR-2254-2021(O&M)

Date of decision:-7.10.2021

Krishan

...Petitioner

Versus

Kuldeep Joshi and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.R.A. Sheoran, Advocate
for the petitioner.

H.S. MADAAN, J.

Case taken up through video conferencing.

Briefly stated, the facts of the case are that a suit for grant of perpetual injunction was filed by plaintiff Krishan against defendants Kuldeep Joshi, Duty Magistrate/Tehsildar, Charkhi Dadri, Deputy Commissioner, Charkhi Dadri restraining them from causing any interference in the peaceful possession of the plaintiff over the suit property by fencing it by means of wire.

Inter alia in the plaint, the plaintiff contended that plaintiff along with his brother Jagmal had purchased land measuring 8 Kanals 8 marlas bearing Khewat No.9//13 min, Khatoni No.37 out of total land measuring 198 Kanals 3 marlas as per jamabandi for the year 1993-94 from two of the co-sharers, namely, Om Parkash and Surrender vide sale deed No.741 dated 26.6.1997 for a sum of Rs.94,500/-; the property had been purchased in the name of the plaintiff and his brother Jagmal by their

father and they were given possession of specific area i.e. land comprised in Khasra No.34//9/1 measuring 5 kanals 12 marlas and measuring 2 kanals 16 marlas; since then the plaintiff along with his brother has been in possession of that piece of land; they had installed a Dharam Kanta (weighment bridge) in that piece of land and it is being run for a long time; the mutation was also sanctioned in favour of the plaintiff bearing No.657 dated 28.7.1997; despite that, the particular khewat was further bifurcated by the revenue authorities into three different parts without any basis and without any order from competent Court; the khasra number purchased by the plaintiff and his brother was allotted to some other khewat; taking benefit of that fact, defendant No.1 – Kuldeep Joshi filed an application for partition of joint land and get an order in his favour without any notice to the plaintiff; thereafter Kuldeep Joshi moved an application to Deputy Commissioner, Charkhi Dadri for fencing of the land in question and on that application Deputy Commissioner, Charkhi Dadri appointed Tehsildar, Charkhi Dadri as Duty Magistrate to do the needful.

Feeling aggrieved, the plaintiff had brought the suit in question. He had also filed an application under Order 39 Rules 1 & 2 CPC for grant of ad interim injunction. Notice of the suit as well as application was given to the defendants. Defendant No.1 put in appearance and filed written statement as well as reply to the application for ad interim injunction taking several preliminary objections, on merits contending that the plaintiff has no concern with the suit land and he has raised some illegal construction in absence of defendant No.1, which is to

be removed in a legal manner; as a matter of fact, vendors of plaintiff were not in possession of any specific portion of the joint land, therefore, they cannot deliver possession thereof to their vendors i.e. plaintiff and his brother; the sale of specific khasra number by vendors of plaintiff is to be considered as sale of the share only and further the construction has been raised by plaintiff recently to encroach upon the land of defendant No.1; as a matter of fact the plaintiff is a trespasser; the defendant No.1 was having 1/4th share in Khewat No.30 Khatoni No.48 measuring 16 kanals 16 marlas with which the plaintiff has no concern; the defendant No.1 had moved an application for partition before the Court of Assistant Collector, Charkhi Dadri, which was decided on 14.3.2019 and 'Sanad Taksim' was prepared; the defendant No.1 was granted possession of Khasra No.34//12/2/2 (2-0) and 19/1/1 (2-4) by the revenue authorities and the entry was recorded at serial No.570 dated 16.7.2019; the mutation No.1252 was also entered in that regard. According to the defendant No.1, he is resident of Charkhi Dadri, which is at a distance of 12 kms. from village Santokhpura and taking advantage of that fact as well as on account of breaking out of pandemic Covid-19, the plaintiff encroached over the land in question. The defendant No.1 prayed for dismissal of the suit as well as application.

Defendants No.2 and 3 did not file any written statement and reply to the application.

After hearing the counsel for the parties, the Court of Civil Judge (Sr.Divn.), Charkhi Dadri vide order dated 18.3.2021 dismissed the application for grant of ad interim injunction.

Feeling aggrieved by that order, the plaintiff had preferred an appeal before District Court, Charkhi Dadri, which was heard and disposed of by Additional District Judge vide order 21.9.2021 inasmuch as the appeal was dismissed.

Now the plaintiff has knocked at the door of this Court by way of filing the present revision petition.

I have heard learned counsel for the revisionist/plaintiff besides going through the record and I find that the revision petition does not have any merit and is doomed for failure.

Learned trial Court on analysis of the factual and legal position had observed in para No.5 of the impugned order dated 18.3.2021 that plaintiff has indulged in making misrepresentation since in the site plan attached by him with the plaint, he had shown that the entire construction has been raised by him upon the land comprised in Khasra No.19/1/1/ whereas in his pleadings, he has claimed that he was given possession over khasra No.9/1 and 12/2/2/. Furthermore, from the perusal of the jamabandi for the year 1993-94, it came out that the tenants were in possession over the suit property as 'Gair Maurusi' through thereafter they were declared as owners in possession indicating that defendants became owner in possession over the land comprised in Khewat No.30 Khatoni No.48 total measuring 16 Kanals 16 Marlas situated at village Santokhpura to the extent of 1/4th share measuring 4 Kanals 4 Marlas. The trial Court has observed that the plaintiff has failed to prove his exclusive possession over the land comprised in Khasra No.9/1 and 12/2, which he had failed to do since the site plan attached with the plaint betrays his

such claim. On the other hand the defendant had prima facie established his exclusive possession over the land comprised in Khasra No.12/2/2 measuring 2 Kanals 0 Marla and 19/1/1 measuring 2 Kanals 4 Marla, therefore, the plaintiff was not entitled to get any injunction. In appeal learned Additional District Judge, Charkhi Dadri agreed with the findings recorded by the Civil Judge (Sr.Divn.) observing that from the record defendant No.1 being in possession of the suit property comes out to be there and from the documents available on record, it comes out that the Dharam Kanta was installed only recently and it is not in existence since long. Consequently, the appeal was dismissed and order passed by the Civil Judge (Sr.Divn.) Charkhi Dadri was affirmed.

I on my part do not see any reason to differ with the Courts below on the point that plaintiff has failed to make out a case for grant of ad interim injunction.

I find that the impugned orders passed by the Courts below are detailed and well reasoned, which do not suffer from any illegality or infirmity and no interference therewith is called for while exercising jurisdiction under Article 227 of the Constitution of India.

Thus, finding no merit in the civil revision petition, the same stands dismissed.

07.10.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No