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

**CIVIL REVISION No.3272 of 2021 (O&M)
DATE OF DECISION : 14.12.2021**

Satish Kumar

.....Petitioner

versus

Raj Singh and another

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Harish Bhardwaj, Advocate for the petitioner

ALKA SARIN, J. (Oral):

Heard in physical mode.

The present Civil Revision Petition under Article 227 of the Constitution of India has been filed challenging the order dated 26.08.2021 (Annexure P-7) passed by the learned Additional District Judge, Sonapat whereby the order dated 14.07.2021 (Annexure P-5) passed by the Court of Civil Judge (Junior Division), Sonipat has been set aside and the injunction application of the plaintiff-petitioner has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for permanent injunction under Sections 37 and 38 of the Specific Relief Act, 1963 for restraining the defendant-respondents

from dispossessing the plaintiff-petitioner from the suit property, as detailed in para-1 of the plaint, forcibly and illegally as also from interfering in the peaceful possession of the plaintiff-petitioner over the suit property. The plaintiff-petitioner had averred in the plaint that he was owner in possession of house/boutique/parlour measuring 100 square yards which is East to West 48' and North to South 18'9" bounded as under:

East	:	Gali Rasta 15 feet wide
West	:	House of Om Parkash
North	:	House of Mahender Singh
South	:	Remaining portion of plot of Sushil Kumar Kaushi comprised in Rectangle & Killa No.44//1, situated in the area of Garhi Brahman, Ashok Vihar, Sonapat within the limits of Municipal Corporation, Sonapat.

As per the averments made in the plaint, the mother of the plaintiff-petitioner was the owner in possession of the plot measuring 200 square yards and the suit property forms a part of the same property. An oral settlement is stated to have taken place in the year 2007-2008 according to which the plot measuring 200 square yards was divided into two portions between the plaintiff-petitioner and his brother in equal shares. The property, as detailed in para-1 of the plaint, fell to the share of the plaintiff-petitioner and since then the plaintiff-petitioner is stated to be using the same. It is further averred that the defendant-respondents are strong-headed persons and threatening to dispossess the plaintiff-petitioner forcibly and illegally from the suit property.

On notice, the defendant-respondents appeared and stated in their written statement that the plaintiff-petitioner was neither the owner nor in possession of the suit property and hence the question of dispossessing him from the suit property did not arise. It was further stated that the defendant-respondent No.2 and her son-in-law Mukesh are the owners and in possession of the suit land and a totally false case had been filed by the plaintiff-petitioner.

Vide order dated 14.07.2021 the Trial Court ordered maintenance of *status quo* regarding possession by both the parties to the suit. This order was challenged by the defendant-respondents before the Lower Appellate Court who vide order dated 26.08.2021 allowed the appeal, set aside the order dated 14.07.2021 passed by the Trial Court and dismissed the injunction application. Hence, the present civil revision petition by the plaintiff-petitioner.

The lower Appellate Court, while dismissing the injunction application and allowing the appeal preferred by defendant-respondents, has held that the plaintiff-petitioner has not disclosed that the plot which fell to the share of plaintiff-petitioner had been sold by his mother vide a registered sale deed on 17.12.2012 and he had appended his signatures as a witness thereon. It has further been observed that the plaintiff-petitioner has never challenged the sale deed dated 17.12.2012. From the pleadings of the parties, it emerged that the plot measuring 200 square yards purchased by the mother of the plaintiff-petitioner vide sale deed dated 29.04.1988 was part of a family settlement which was reduced into writing on 29.09.2012. As per the family settlement, the plot was divided into two

portions. One portion of the plot measuring 100 square yards fell to the share of the plaintiff-petitioner and the other to the share of his brother, Sushil Kumar. It was stated in the family settlement that in case either of the sons wanted to sell his share the mother would execute a sale deed in consonance with the family settlement. The mother of the plaintiff-petitioner Smt. Rama Devi sold a plot measuring 100 square yards i.e. the share of the plaintiff-petitioner to one Jagdish through registered sale deed dated 17.12.2012. As per the impugned order, the sale deed also bears the signatures of the plaintiff-petitioner as a witness which fact is not denied by the learned counsel for the plaintiff-petitioner appearing herein.

Learned counsel for the plaintiff-petitioner would contend that the suit is for permanent injunction and in case the injunction is not granted the suit would be rendered infructuous. The learned counsel would contend that the plaintiff-petitioner has appended photographs to show his possession over the suit property.

Heard.

In the present case, as narrated above, the half share of the land, which came to the share of the plaintiff-petitioner, was admittedly sold by Smt. Rama Devi vide registered sale deed dated 17.12.2012 in favour of Jagdish son of Nanhu Ram and the plaintiff-petitioner himself was an attesting witness to the sale deed. The other half share measuring 100 sq. yds. was transferred in a family partition in favour of Sushil Kumar, the other son of Smt. Rama Devi, vide registered partition deed dated 08.06.2015. Thereafter, Sushil Kumar got mutation No.15457 sanctioned in his name on the basis of the partition deed. On 12.09.2019

the said Sushil Kumar sold the 100 sq. yd. plot to Mukesh Kumar son of Raj Singh (Raj Singh is defendant respondent No.1) and Smt. Reena Kumari (defendant-respondent No.2) vide a registered sale deed and transferred the possession of 100 sq. yds. to Mukesh Kumar, who is the son of defendant-respondent No.1, and Smt. Reena Kumari (defendant-respondent No.2). Thus, neither Sushil Kumar nor the petitioner were left with any right, title or interest in the land measuring 100 sq. yds. which was subject matter of registered sale deed dated 12.09.2019.

Learned counsel for the plaintiff-petitioner, on a query put by the Court, candidly admitted that the sale deed dated 17.12.2012 had been executed by his mother Smt. Rama Devi and he was an attesting witness of the said sale deed.

The sole argument of learned counsel for the plaintiff-petitioner is that the plaintiff-petitioner is in possession of the suit property. However, not a single document has been shown, apart from the photographs appended with the present revision petition as Annexure P-8, which would show the possession of the plaintiff-petitioner over the suit property. Undeniably, the plaintiff-petitioner has not mentioned any of these facts in the plaint. The plaintiff-petitioner is seeking an injunction against a true owner without there being an iota of evidence to even show his possession. Besides, the plaintiff-petitioner is guilty of *supressio veri* and *suggestio falsi* inasmuch as there has been total concealment of facts by him. By withholding vital documents and not disclosing the correct facts, the plaintiff-petitioner had suppressed material facts from the Court. Further, the plaintiff-petitioner has also not been able to make out a

prima facie case in his favour nor is the balance of convenience in his favour.

In view of the above, I do not find any error in the exercise of jurisdiction by the Lower Appellate Court. There is no merit in the present revision petition which is dismissed.

(ALKA SARIN)
JUDGE

14.12.2021
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<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
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