

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

CR-264-2022

Date of Decision: 07.02.2022

BAKSHISH SINGH AND OTHERS

...Petitioners

Versus

NACHHATTAR KAUR

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ashish Gupta, Advocate
for the petitioners.

(Presence marked through Video Conference)**ARUN MONGA, J. (ORAL)**

Petitioners seek setting aside of an order dated 16.08.2019 (Annexure P-4) passed by learned Additional Civil Judge (Senior Division), Baghapurana, whereby, the application under Order 39 Rules 1 and 2 filed by the plaintiff-respondent has been allowed as well as impugned order dated 09.09.2021 (Annexure P-7) passed by learned Additional District Judge, Moga, whereby, the appeal filed by the present petitioners has been dismissed and the cross-objections filed by the defendant-respondent has been allowed.

2. Learned counsel for the petitioners submits that the plaintiff-respondent filed a suit seeking declaration that she is owner in possession of suit land measuring 25 kanals 2 marlas on the basis of mutation No.28973, which was sanctioned on 29.11.2013 on the basis of judgment and decree dated 21.06.1976 in Suit No.72 and Rapat No.209 dated 12.01.1977. The mutation on the basis of that decree was allegedly sanctioned on 29.11.2013 i.e. after about 36 years. Learned counsel further submits that the application

filed for temporary injunction was allowed by the learned trial Court on the ground that as per decree dated 21.06.1976 and copy of rapat dated 15.10.2014, FIR No.15 dated 02.05.2015, the plaintiff is in possession of suit land and is, therefore, entitled to the relief of temporary injunction. Aggrieved, the petitioners filed an appeal and the plaintiff/respondent has filed cross-objection against non-staying the mutation proceedings pending before the Revenue Authorities. However, the learned Appellate Court dismissed the appeal of the petitioner and allowed the cross-objection of the plaintiff-respondent. Hence, the present petition.

3. I have heard learned counsel for the petitioner and gone through the case file.

4. The appellate order assailed herein is premised, *inter alia*, on the following reasoning:

“13. Plaintiff/respondent Nachhattar Kaur has filed suit for declaration to the effect that she is owner in possession of 25 kanals 2 marlas on the basis of mutation No.28973 sanctioned as per judgment and decree dated 21.06.1976 in a Civil Suit No.72 and Rapat No.209 dated 12.01.1977 regarding delivery of possession of suit property, as mentioned in the heading of the plaint and further sought declaration that sale deed dated 30.11.2018 under Wasika No.556 executed by Bakshish Singh through attorney Jagsir Singh in favour of Taranjit Kaur, who is wife of Jagsir Singh and mutation No.31217 dated 17.12.2018/31.12.2018 on the basis of said sale deed is altogether illegal, null and void. Nachhattar Kaur also sought injunction restraining the defendants from interfering into her peaceful possession over the suit property by way of partition proceedings and also sought restraining the defendants from alienating the suit property to any one further by means of sale, mortgage, lease, gift etc. on the basis of mutation No.31217 till the pendency of the present suit.

14. As per the case of plaintiff/respondent in the appeal, she is owner in possession of 25 kanals 2 marlas on the basis of mutation No.28973 duly sanctioned as per judgment and decree dated 21.06.1976 in Suit No.72 and Rapat No.209 dated 12.01.1977. Perusal of record of learned trial court shows that judgment and decree dated 21.06.1976 in Suit No.72 has not been placed on record. Learned counsel for Nachhattar Kaur has submitted that due to fire in the Record Room files have burnt. He has placed on record copy of register, which

shows that Civil Suit No.72 dated 17/18.03.1975 titled Nachhattar Kaur daughter of Partap Kaur wife of Jalour Singh, resident of Sanehar, Tehsil Zira Versus Bakshish Singh son of Sunder Singh, resident of BhinderKhurd, Tehsil Zira has been decided. Plaintiff Nachhattar Kaur has placed on record copy of Jamabandi and copy of mutation No.28973 dated 29.11.2013. Perusal of aforesaid mutation shows that mutation has been sanctioned in favour of Nachhattar Kaur regarding 1/3rd share i.e. 25 kanals 2 marlas on the basis of decree passed by Shri. K.S. Bhullar, Sub Judge, Moga dated 21.06.1976. Perusal of case file shows that after sanctioning the mutation, appellant Bakshish Singh has challenged the order dated 29.11.2013 before the Court of Shri Arvind Pal Singh Sandhu, PCS, Additional Deputy Commissioner, Moga, who has dismissed the appeal vide order dated 20.10.2014. Against above said order, appellant Bakshish Singh has challenged the order before the Commissioner, Ferozepur Division, Ferozepur, who has remanded the case to D.R.O.-cum-A.C. 1st Class, Moga for giving fresh decision. On the basis of this order, Shri Pawan Kumar, Assistant Collector 1st Grade-cum-District Revenue Officer, Moga passed the order dated 14.09.2016 in favour of appellant Bakshish Singh son of Sunder Singh. Nachhattar Kaur has challenged the order dated 14.09.2016 before the Court of Shri Ajay Kumar Sood, PCS, Additional Deputy Commissioner-cum-Collector, Moga, who has remanded the case vide order dated 23.05.2017. Bakshish Singh has challenged the order before the Commissioner, Ferozepur Division, Ferozepur. Perusal of case file shows that on the basis of judgment and decree dated 21.06.1976, Nachhattar Kaur has been held to be owner in possession of property by the revenue authorities. After that Bakshish Singh has challenged the mutation during the pendency of proceedings before the revenue authorities. Bakshish Singh through his attorney Jagsir Singh has transferred the property in favour of Taranjit Kaur, who is wife of defendant No.2 Jagsir Singh. This Court is of the view that Nachhattar Kaur is in possession of the suit property. Suit property has to be preserved. If during pendency of the case property, suit property is alienated, it will lead to multiplicity of litigation. Learned trial court has rightly held that Nachhattar Kaur is entitled for injunction.

15. *In the cross-appeal, Nachhattar Kaur has sought direction to the revenue authorities to stop the partition proceedings. Perusal of the revenue record shows that Bakshish Singh has initiated the partition proceedings before the revenue authorities. This Court is of the view that as titled of the parties is subjudice, the partition proceedings before the revenue authorities should not proceed with. Hence, revenue authorities are directed not to proceed with partition proceedings.*

16. *In view of aforesaid discussion, no illegality or perversity has been found in the impugned order dated*

16.08.2019 passed by learned lower court. Impugned order passed by learned lower court is found to be a well reasoned and legal order. With aforesaid modifications, same is hereby upheld and confirmed.”

5. A perusal of above leaves no manner of doubt that there is no illegality in the findings of facts or in law, so as to exercise extraordinary revisional jurisdiction of this Court.

6. There is no room for interference in the aforesaid valid reasons recorded by the trial Court, with which I am in agreement.

7. Dismissed.

8. However, it is made clear that any alienation of the suit property during pendency of the trial, shall be subject to the rule of *lis pendens*.

(ARUN MONGA)
JUDGE

07.02.2022
gurpreet

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No