

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

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CRM-M-11294 of 2020(O&M)

Date of Decision:04.08.2022

**Anita Gupta and others**

**---Petitioners**

**versus**

**State of Punjab and others**

**---Respondents**

**CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

Present: Mr. Pawan Kumar, Senior Advocate with  
Ms. Vidushi Kumar, Advocate and  
Mr. Surya Kumar, Advocate  
for the petitioners

Mr. Karanbir Singh, AAG, Punjab

Mr. Rajesh Bhatheja, Advocate  
for respondents No. 7 to 9

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**VINOD S. BHARDWAJ, J. (ORAL)**

**CRM- 27445 of 2022**

The instant application under Section 482 of the Code of Criminal Procedure has been filed by respondents No. 7 to 9 for placing on record the reply to the main petition.

Allowed as prayed for. Reply on behalf of respondents No. 7 to 9 is taken on record, subject to all just exceptions.

Registry is directed to tag the same at an appropriate place in the paper book.

Application stands disposed of accordingly.

**CRM-M-11294 of 2020**

The present petition has been filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC') with a prayer that FIR may be ordered to be registered against respondents No. 7 to 9 who forcibly entered into the land of the petitioners despite a Civil Court decree in their favour with the aid and help of local police i.e. respondents No. 5 and 6. Further prayer was also made that the order dated 30.12.2019 passed by the Senior Superintendent of Police, Patiala be quashed as the relevant material has been ignored while passing the impugned order (Annexure P-12).

Learned Senior counsel appearing on behalf of the petitioners contends that the petitioners are in exclusive possession of agricultural land measuring 12 kanal-15 marla comprised in khasra No. 32//22/2(5-3), 23 (7-7) and 24/1 (0-5) situated in village Mashingan, Tehsil and District Patiala as per the jamabandi pertaining to the year 2004-2005. It is contended that Karamjit Singh, Harjit Singh and Jagtar Singh, i.e. the private respondents No. 7 to 9 started interfering in the settled and exclusive possession of the petitioners, thus, resulting in institution of Suit No. 121 of 31.03.2009 seeking permanent injunction restraining the defendants (respondents No. 7 to 9 herein) from interfering in their peaceful possession. The said Civil Suit was decreed in favour of the petitioners by accepting the exclusive and peaceful possession of the petitioners on the said land. It is contended that the decree in question has already become final in favour of the petitioners and against the private respondents. He further contends that the Civil Court, while passing the aforesaid decree

had duly taken note of the sale deed dated 02.03.2009 (Annexure P-2) relied upon by the respondents to claim their title. Furthermore, an FIR was also registered against the private respondents for commission of offences punishable under Sections 447, 506, 148 and 149 of the Indian Penal Code bearing FIR No. 60 dated 19.04.2009 registered at Police Station, Julkan, District Patiala, for their trespass onto the said land. However, despite the decree of injunction having been passed in favour of the petitioners, a mutation bearing No. 4608 dated 25.03.2009 was sanctioned in favour of the private respondents. The aforesaid mutation was the subject matter of challenge in a separate Civil Suit filed by the petitioners seeking a declaration that the said mutation is wrong, illegal, null and void and not binding against the rights of the petitioners. He contends that the Suit for declaration was dismissed by the Civil Judge (Junior Division), Patiala vide judgment dated 13.03.2019 against which Civil Appeal No. 286 of 2019 was preferred. The said civil appeal was allowed in favour of the petitioners and the judgment and decree passed by the Civil Judge (Junior Division), Patiala, was set aside. The relevant extract of the judgment passed by the Additional Sessions Judge, Patiala, is reproduced hereinbelow:-

*“The defendants nowhere opted to challenge the sale deed dated 05.03.1997 neither did they challenge the khasra girdawari entries. They are just trying to wash their hands of the onus of proof by claiming it as a mystery. In the judgment and decree dated 23.09.1996, the Appellate Court while decreeing the suit of the plaintiffs for joint possession of land measuring 8 kanals 6 marlas with direction to execute the sale*

*deed did not specify any specific khasra number. Yet, since, it could be construed from the record that sale deed pertained to khasra no. 32//22/2(0-9), 23(7-7). However, once, only the symbolic possession of the property was delivered and the partition proceedings are still pending the mutation qua the specific portion/khasra could not have been sanctioned in favour of the respondents. Partition proceedings have been admitted by the defendants as well as the plaintiffs. There is no admission on behalf of the appellants to the effect that the respondents are in possession of the specific khasra numbers. The trial court mis-guided itself by the admissions regarding pendency of the partition proceedings to construe that the possession has been admitted by the plaintiffs or to hold that none of the parties is in exclusive possession of the suit property.*

*To further clarify it is reiterated in brief that the possession of the plaintiffs over the suit property has been upheld by the Civil Court and the Appellate Court. It being a subsequent event to the order passed by the Commissioner, therefore, the findings in the order of the learned Commissioner regarding possession having been decided in favour of the respondents are perverse and do not hold good. Since, the possession was made the basis of sanctioning the mutation the same also do not hold good and as such said orders are liable to be set aside. The parties are already pursuing their partition proceedings before the Appropriate*

*Authority and unless the partition is effected the defendants have no right to interfere in the specific portion having found to be in possession of the plaintiffs/appellants.”*

Learned Senior Counsel further contends that even though Regular Second Appeal has been preferred before this Court, however, there is no interim stay against the said judgment. Resultantly, the judgment and decree passed by the Additional District Judge, Patiala, is in force as on date.

It is vehemently argued by learned Senior Counsel appearing on behalf of the petitioners that the private respondents forcibly entered into the land of the petitioners in order to take possession thereof after being duly armed with weapons and also caused beating to the petitioners including hurling abuses and criminally intimidating them to exterminate them. Representations in this regard were duly furnished to the Station House Officer of the Police Station Julkan, Tehsil Dudansadha, District Patiala as well as to the Senior Superintendent of Police, Patiala, requesting them to take action against the private respondents especially when the officials i.e. Deputy Superintendent of Police (Rural), Patiala and the Station House Officer of Police Station, Julkan, District Patiala, were actively conniving with the private respondents to ensure that possession of the land is handed over to the private respondents despite the decree having been passed in favour of the petitioners.

Since the aforesaid representations were not being looked into, the petitioners preferred CRM-M-50377 of 2019 before this Court which was disposed of vide order dated 27.11.2019 directing the Senior Superintendent of Police, Patiala, to objectively consider the representation

submitted by the petitioners in the light of the Civil Court Decree dated 29.07.2013, that has become final between the parties and to pass a speaking order within a period of four weeks from that date. It was also ordered that while considering the aforesaid representation, safety of the petitioners be ensured and he shall also examine as to under what circumstances and as to how a person in settled possession could be restrained from entering his own property.

In pursuance of the aforesaid directions issued by this Court, the order dated 30.12.2019 (Annexure P-12) was passed by the Senior Superintendent of Police, Patiala. The relevant extract of the finding recorded by the Senior Superintendent of Police, Patiala, is reproduced hereinbelow:-

*“The Superintendent of Police, City, Patiala, during the enquiry has recorded the statements of all the concerned persons and the record produced by them in support of their version was also perused by the enquiry officer during the enquiry proceedings. From the enquiry report submitted vide No. 2149/A+606/C/S.P./City/PTA dated 30.12.2019, it has been concluded by Superintendent of Police, City, Patiala that the allegations levelled by the petitioner No. 4 in his representation dated 28.05.2019 (Annexure P-10) regarding trying to take possession illegally on his land by the respondents No. 7 to 9 and on restraining by him to give beatings by him to them are not found to be correct, as during the enquiry, nothing has come into the notice in this regard. Moreover, the petitioners have also not produced any concrete*

*evidence in this regard. It has also come into the notice that the Civil Litigation between both the parties is already going on and the same is still pending before the learned Court of Ms. Neha Goyal, PCS, Civil Judge Junior Division, Patiala. As the matter relates to claiming the ownership by both the parties, on the same land, the matter is found to be a land dispute which is civil in nature. The petitioner No. 4 has already been advised by the enquiry officer to approach the Learned Court of Competent Jurisdiction in this regard. However, if he feels any kind of apprehension or danger to his/their life, liberty and property from the hands of private respondents, then he/they can approach the local police for the redressal of grievances immediately.*

*Keeping in view, the above mentioned facts, circumstances and report submitted by Superintendent of Police, City, Patiala alongwith recommendations made therein, no further action is required to be taken by the police at this stage when Civil Litigation between both the parties is going on and the matter is also found to be a civil nature case, on the representation dated 28.05.2019 (Annexure P-10) actually submitted by the petitioner No. 4, to this office, as well as in the light of the Civil Court Decree dated 29.07.2013 (Annexure P-1). So, the papers of this petition as well as representation dated 28.05.2019 (Annexure P-10) and papers of Civil Court Decree dated 29.07.2013 (Annexure P-1) are ordered to be consigned to record.”*

While referring to the aforesaid order of the Senior Superintendent of Police, Patiala, learned Senior counsel appearing for the petitioners has submitted that the Senior Superintendent of Police, Patiala has chosen not to look into the grievances espoused by the petitioners and has also not enquired into the role and allegations levelled against the Deputy Superintendent of Police, Patiala as well as against the then Station House Officer, Julkan. He further contends that even though the decrees in question had been passed in favour of the petitioners holding them in sole and exclusive possession of the land in question, however, the private respondents themselves claimed to be in settled and exclusive possession of the land. While denying the factum of possession being with the private respondents, learned Senior counsel contends that the aforesaid aspect itself shows that the private respondents have been making attempts to enter into this land forcibly by ignoring the diktat of the decree passed consecutively against the private respondents.

Mr. Karanbir Singh, AAG, Punjab, has relied upon the affidavit filed by Sukhminder Singh, PPS, Deputy Superintendent of Police Rural, Patiala, on behalf of respondents No. 1 to 6. At the outset, this Court deprecates filing of the instant affidavit by the said Deputy Superintendent of Police, who is himself arraigned as a person aligning with the private respondents. The Senior Superintendent of Police, Patiala, has chosen to place reliance upon an officer to represent the stance of the District Administration especially when allegations of malice, mischief and bias had been specifically levelled against the said officer. Resultantly, not much reliance or weight can be placed on such an affidavit. It is, thus, evident that the SSP has not taken due care or caution or exercised appropriate

prudence to ensure that the directions contained in the order passed by this Court on 27.11.2019 in CRM-M-50377 of 2019 ought to have been meticulously complied with.

In the said affidavit as well, the respondent-State seeks to place reliance on a submission that the matter is pending adjudication before the Civil Court but has conveniently chosen not to make a reference to the Decrees that have been passed which brings the civil dispute to rest. It cannot be accepted that the decrees passed by the Civil Court would be ignored only under the pretext that there is a dispute pending before the Civil Courts. He further makes reference to the enquiry report (Annexure R-1/T) conducted by the Superintendent of Police, City Patiala. He also makes reference to the concluding part of the said enquiry report, which reads thus:-

*“The Annexure P-1, which is Degree of Civil Court dated 29.07.2013. It is written in this regard that Anita Gupta etc. had filed a civil suit against Karamjit Singh etc. on 31.03.2009 and the Court of Mrs. Dipika, Additional Civil Judge, Patiala has written in its judgment; “In view of my aforesaid discussions suit of the plaintiffs is decreed and defendants are restrained from interfering in any manner in the peaceful possession of the plaintiffs and also from dispossessing them from agricultural land measuring 12 Kanal 15 Marla comprised of Khasra No. 32//22/2(5-3), 23 (7-7) and 24/1(0-5) except in details fully described in the head note of the plaint, except in due course of law. Decree sheet be prepared accordingly. File be consigned to the record room”.*

*Shamsher Singh, Harjit Singh etc. had filed an appeal in the Sessions Court against this order. This appeal was decided on 08.01.2015 by Mr. Nirbhau Singh Gill, Additional District Judge, Patiala, "As a sequel to my discussion, I do not find any infirmity and illegality in the impugned judgment passed by the learned trial Court and the same is affirmed. Hence the appeal being devoid of any merit is dismissed with no order as to costs/Decree be drawn. Trial Court record be returned forthwith along with a copy of judgment and appeal file to be consigned to the record room". Regarding the same land, sale deed was executed in favour of Jagtar Singh etc. as per the order of the Hon'ble Court in the year 2009 and mutation has been sanctioned in their names. The petitioner had filed his suit in the Court of SDM Patiala, ADC Patiala and Commissioner Patiala to cancel this mutation, which was dismissed. Copies of the order are attached herewith. Now case is pending in the court of Miss Neha Goyal, PCS, Civil Judge, Junior Division Patiala of both the parties, which is under consideration. Both the parties are claiming their rights on this land, which is a matter of civil nature and their cases are pending in court. The petitioner has been directed to take up the matter with the Hon'ble Court and if he fears any loss of life or property, he should immediately inform the police. No action is liable to be taken by the police on the attached petition/application dated 28.05.2019 Annexure P-10, so it is recommended to consign the same to record room."*

Learned counsel appearing for private respondents No. 7 to 9 has contended that the private respondents are in actual physical possession of the land in question and that it is rather the petitioners who are wanting to take forcible possession of the said land. He further contends that the FIR was initially got registered in the year 2009 against the petitioners, wherein it is admitted by the petitioners that possession of the land in question has been taken over by the private respondents. He thus, contends that the aforesaid FIR itself is a proof that possession of the land is vested with the private respondents. He further contends that the private respondents were acquitted in the said criminal trial and the charge against them was not proved. He further makes a reference to the sale deed executed in their favour to contend that the said sale deed was as a result of the suit being decreed in his favour under the Specific Relief Act. He further places reliance upon the Civil Suit No. 71/T dated 13.09.2012 filed by the petitioners for declaration and permanent injunction which was dismissed vide judgment and decree dated 13.03.2019.

I have heard learned counsels appearing for the respective parties and have gone through the records of the case with their able assistance.

In so far as the contention of the respondents that the FIR was registered against them in the year 2019 for trespass into the property by alleging that they have entered into the land is concerned and their resultant acquittal, the same by itself cannot amount to the private respondents being in settled possession of the land. The trespass into the property does not mean that the person who trespasses actually becomes settled in actual and exclusive possession of the said land. Furthermore, the fact that the private

respondents stand acquitted of the aforesaid charge would rather defeat the said submission since the Criminal Court came to a conclusion that the allegation of the petitioners entering possession of the land, could not be established. The submission of the petitioners qua registration of the FIR and the inference being sought to be drawn on a reading of the FIR, thus, stands defeated by the judgment so passed by the Criminal Court therein.

While referring to the argument advanced by learned counsel appearing for respondents No. 7 to 9 that the suit for specific performance of the contract under the Specific Relief Act was decreed in favour of the private respondents and that the sale deed was executed with the interference of the Court and possession was delivered, the same, however, has a different aspect. Merely because a sale deed is ordered to be registered while decreeing a suit for specific performance under the Specific Relief Act, would not *ipso facto* amount to possession being delivered. It is undisputed that in case the possession is to be delivered through the process of Court, a Roznamcha entry is required to be entered with the Patwari/Revenue Officials. He could not place on record any document to establish that possession of any specific parcel of land was handed over to the private respondents pursuant to any judgment and decree passed by the Court. At the same time, it is also evident that the aforesaid sale deed was also taken into consideration by the Civil Court while examining the suit for permanent injunction instituted by the petitioners and it came to a categorical finding that respondents No. 7 to 9 had failed to establish their possession over any parcel of land.

Referring to the reliance placed by the learned counsel appearing for respondents No. 7 to 9 on the judgment and decree dated

13.03.2019 passed by the Civil Judge (Junior Division), Patiala, the said judgment and decree cannot be accepted since in an appeal preferred against the same, the judgment and decree already stands set aside by the Additional District Judge, Patiala. There is no stay against the said judgment and decree even though the Regular Second Appeal has been preferred by the private respondents herein.

Having noticed above, it seems that the official respondents have been concealing more than they have been revealing and that their approach in examining the grievances espoused by the petitioners has not been proper. It was incumbent upon the Enquiry Officer to have duly associated the petitioners regarding the allegations levelled by them in the representation dated 28.05.2019 so furnished and to assess veracity thereof on the strength of cogent material. A mere brushing reference that an enquiry has been made into the allegations and that the co-villagers have not supported the allegations levelled by the petitioners, I am afraid, may not be sufficient to dispel the allegations levelled by the petitioners with respect to the alleged offence of trespass and criminal intimidation alongwith hurt alleged by the petitioners.

Be that as it may, I find that the order passed by the Senior Superintendent of Police, Patiala, in consequent to the order dated 27.11.2019 passed in CRM-M-50377 of 2019 by this Court, does not take into consideration the legal position as well as the factual aspects noticed above and the same has been passed summarily without proper appreciation. The said order is accordingly set aside.

The Senior Superintendent of Police, Patiala, is directed to look into the representation dated 28.05.2019 submitted by the petitioners and to

pass a speaking order taking into consideration all aspects of the matter.

Needless to mention that appropriate action on the strength of such allegations shall also be taken.

Petition stands disposed of accordingly.

(VINOD S. BHARDWAJ)  
JUDGE

04.08.2022

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No