

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

CR-2304-2022 (O&M)
Date of Decision: July 14, 2022

Rahul

...Petitioner

VERSUS

Pirithi Raj and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rajinder Kumar, Advocate
for the petitioner.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 19.05.2022 passed by learned Addl. District Judge, Fazilka, whereby, an order dated 01.02.2022 passed by Learned Civil Judge (Jr. Divn.), Abohar, has been reversed and the injunction application has been allowed.

Material facts, as culled out from the pleadings placed on the record are that, initially, respondent No.1/plaintiff filed a suit for permanent injunction against the present petitioner Rahul and performa respondents, thereby restraining petitioner-defendant No.3 and performa defendants, from interfering into the peaceful possession over the land measuring 16 Kanals 00 marla, comprised in Rect. No.94 Killa No.9 (8-0), 12 (8-0), Khewat No.335/10, Khatauni No.651, as per Jamabandi for the year 2017-18. Further restraint had also been sought from destroying/damaging the

Kinnow orchard and interfering in the cultivation and irrigation of the land

by the plaintiff. Along with the plaint, an application under Order 39 Rule 1 and 2 CPC was also filed.

Vide order dated 01.02.2022, at first instance, the application under Order 39 Rule 1 and 2 CPC was dismissed by learned Civil Judge (Jr. Divn.), Abohar, thereby making an observation that Khasra Girdawari had been challenged before the Court of Assistant Collector-II, Khuian Sarwar and order dated 23.09.2021 has been passed with regard to the correction of Khasra Girdawari, whereby the said application has been consigned to record room sine-die, till the final decision of the suit. It was further opined that there was concealment of the material facts by the respondent/plaintiff, with regard to the pendency of the application for correction of Khasra Girdawari before the Court of Assistant Collector-II, Khuian Sarwar, while filing the original suit. Hence, the application was dismissed.

Feeling aggrieved by the aforesaid order, an appeal was filed. Vide impugned order dated 19.05.2022, the order passed by learned Civil Judge (Jr. Divn.) was set aside and an application under Order 39 Rule 1 and 2 CPC, filed by the respondent-plaintiff was allowed. The present petitioner and performa respondents were restrained from interfering into the peaceful possession of the plaintiff over the suit property and further restrained from destroying/damaging the Kinnow orchard and from interfering in cultivation and irrigation of the said land by the plaintiff, during the pendency of the main suit, illegally, forcibly, except in due course of law.

Feeling aggrieved by the aforesaid order dated 19.05.2022 passed by learned Addl. District Judge, Fazilka, petitioner Rahul, who was

impleaded as defendant No.3 before the lower Court, had filed the present

revision petition.

It is pertinent to mention that the suit in hand was filed on 23.07.2021. However, the order dated 23.09.2021 was passed by the Assistant Collector-II, Khuian Sarwar, on the application for correction of Khasra Girdawari, which was filed on 05.08.2021. In the light of the same, it becomes evident that suit was filed much prior to the filing of an application for correction of Khasra Girdawari, by Rahul and thus, wrong observation had been made in the order passed by learned Civil Judge (Jr. Divn.), about concealment of the pendency of application for correction of the Khasra Girdawari, by the respondent-plaintiff Pirthi Raj.

As per the Jambandi of the suit property for the year 2017-2018, which has been brought on record, it is evident that the respondent-plaintiff is shown to be co-sharer of the joint khata and he is in exclusive possession of the suit property bearing Rect. No.94, Khasra No.9 and 12. Even, in the Khasra Girdawari from Sawni 2020 to Hari 2021, the possession of the respondent-plaintiff is reflected, vis-a-vis, the suit property.

No doubt, now petitioner Rahul is shown to be co-sharer in joint khata, vide mutation No.1684 reflected in Jamabandi for the year 2017-18, but however, Pirthi Raj, is shown to be in exclusive possession. Thus, one of the co-sharers, who is in exclusive possession of separate parcel of land can definitely seek injunction against other co-sharers, who are not in possession of the requisite land. As in the revenue record, the exclusive possession of respondent-plaintiff is reflected, he has a right to protect the same.

Even though, much reliance has been placed upon the

proceedings recorded by Naib Tehsildar on 20.09.2021, where, it is alleged that the possession of the suit property is with the defendants, but however, it has been rightly observed by lower Appellate Court that any finding given by the revenue court, has no bearing on the decision, with regard to the issue, between the parties, during the pendency of the civil suit. It has been also rightly observed that the proceedings have been recorded, after institution of the present suit.

Considering the aforesaid fact situation, learned Addl. District Judge, Fazilka, has appraised the material brought on record, in correct perspective and has rightly accepted the appeal and set aside the order dated 01.02.2022 passed by learned Civil Judge (Jr. Divn.) and allowed the application under Order 39 Rule 1 and 2 CPC.

Thus, there is no merit in the present revision petition and the same is hereby dismissed.

July 14, 2022
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No