

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

CR No.2362 of 2020 (O&M)
Date of decision: 4th May, 2022

Malak Singh & others

... Petitioners

Versus

Iqbal Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Amit Jain, Senior Advocate with
Mr. Varun Parkash, Advocate for the petitioners.
Mr. Kanwaljit Singh, Senior Advocate with
Ms. Shazia K. Singh, Advocate for the respondent.

FATEH DEEP SINGH, J.

This revision petition by virtue of Article 227 of the Constitution of India by petitioner Malak Singh and two others against respondent Iqbal Singh seeks to challenge an order dated 11.08.2020 (Annexure P5) passed by the Court of learned Additional District Judge, Karnal whereby the appeal filed by the respondent against the order of the trial Court dismissing the application for interim injunction under Order 39 Rule 1 read with Section 151 CPC was allowed and the petitioners were restrained from interfering into the possession of the plaintiff (now respondent) in the suit land.

Upon hearing Mr. Amit Jain, Senior Advocate assisted by Mr. Varun Parkash, Advocate for the petitioners; Mr. Kanwaljit Singh, Senior Advocate assisted by Ms. Shazia K. Singh, Advocate for the

respondent and with their invaluable assistance had the opportunity to peruse the records of the case.

Iqbal Singh respondent and petitioner Malak Singh and others are progenies of Deva Singh who had two sons namely Iqbal Singh (present respondent) and Nishan Singh (now deceased). Malak Singh, Palwinder Singh and Lakhwinder Singh (present petitioners) are the sons of Nishan Singh deceased. It is a dispute of land comprising of 34 Kanals 16 Marlas out of the total joint land measuring 121 Kanals 19 Marlas. The parties had fallen into litigation whereby a civil suit was filed by Iqbal Singh against Malak Singh and others for permanent injunction. In the said suit, an application under Order 39 Rule 1 and 2 read with Section 151 CPC was disposed off and which order was challenged before the learned Additional District Judge in civil misc. appeal by Iqbal Singh and which was disposed off vide judgment and order dated 11.02.2020 and which is subject matter of present revision petition.

As is there on the records and could not be displaced, the total land between the families which is joint unpartitioned is 121 Kanals 19 Marlas. It is also subject matter of partition proceeding by way of application under Section 111 of Punjab Land Revenue Act between the same very parties which is pending before the Assistant Collector, Second Grade, Karnal, copy of which is annexed as (Annexure P6). Iqbal Singh claims to be in exclusive possession of land

measuring 34 Kanals 16 Marlas out of this very total chunk of land and claims to be shown so in the revenue record comprising of jamabandis and khasra girdawaris. No doubt, in terms of Section 41(h) of the Specific Relief Act, where a more efficacious remedy is available, the party needs to invoke the same and simultaneously two recourses have been adopted between these factions one before the revenue authorities and the other before the Civil Court.

The clam that is sought to be laid by Malak Singh and others that vide document dated 07.01.2000 Iqbal Singh had sold his tubewell connection bearing No.463 in favour of Palwinder Singh and Lakhwinder Singh, does not holds good at this juncture since it is the property of Electricity Undertaking which has issued the same and cannot be transacted inter-se between two private individuals. The claim of a family settlement/partition having come about between the parties in the year 1988 though has sought to be claimed in the pleadings, but to the specific query of this Court nothing tangible could be shown by either of the sides, and therefore, this Court needs to be slow to accept such a plea of exchange/partition so laid by the party claiming it to be so. Iqbal Singh as per the written document dated 11.04.1988 is shown to have leased out land measuring 22 K 8 M in favour of one Harcharan Singh for a period of three years. Though it cannot be termed to be corroborative to a family arrangement or settlement but it certainly corroborates the fact as to Iqbal Singh being in exclusive possession of

this tract of land out of the unpartitioned holding and therefore in terms of the law laid down in '**Bhartu vs. Ram Sarup**' 1981 PLJ 204 which enumerates that where a person is shown to be in exclusive possession of unpartitioned property over a period of time, his possession cannot be disturbed. The very three elements of prima facie case, irreparable loss and balance of convenience are well tilting in favour of Iqbal Singh in view of the fact that all the parties to this litigation are co-sharers in possession but Iqbal Singh is shown to be in exclusive possession of this very chunk of land and which cannot be disturbed otherwise than having recourse to law either by way of partition or a decree of the appropriate Court. The Court below has rightly held that the defendants need to be restrained from interfering into the possession of plaintiff appellant Iqbal Singh over the suit land and not to dispossess him till the decision of the present matter. This Court does not feel that the order under challenge suffers from any irregularity or perversity. The revision petition being without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

May 4, 2022

rps

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