

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

CR No.5408/2022(O&M)

Date of decision: 22.11.2022

Nand Kishore

.....Petitioner

Vs.

Yash Pal and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Rajeev Dev Sharma, Advocate for the plaintiff/
Petitioner.

Nidhi Gupta,J.

This revision petition has been filed by the plaintiff/ petitioner for setting aside (i) order dated 3.12.2019 (Annexure P-5) passed by Civil Judge (Junior Division) Pathankot dismissing his application under Order 39 Rules 1 and 2 CPC; and (ii) order dated 14.7.2022 (Annexure P-7) passed by District Judge, Pathankot, whereby the petitioner's appeal against order Annexure P-5 has also been dismissed.

Brief facts of the case are that the petitioner/plaintiff filed a suit for permanent injunction for restraining the respondents/defendants from interfering in any manner and changing the nature of the plot allegedly owned and possessed by the plaintiff. It is case of the plaintiff/petitioner that he is owner of the suit property having purchased the same from Sardari Lal vide sale deed dated 2.12.1988 and mutation number 981 has also been entered and sanctioned in his favour. However, as the defendants had started encroaching upon and raising construction over the suit property, plaintiff/petitioner was constrained to

file the suit along with an application under Order 39 Rules 1 and 2 for grant of ad-interim injunction.

Perusal of the impugned orders passed by the Courts below shows that respondents/defendants had appeared and filed written statement stating therein that if any sale deed had been executed in favour of the plaintiff/petitioner, it was not executed with specific boundaries and as such the plaintiff cannot claim right over the suit property with specific boundaries. It is further noticed that the plaintiff is trying to encroach upon more land than his alleged share while the suit land was never partitioned nor the plaintiff is exclusive owner-in-possession over the suit land. Accordingly, the Courts below dismissed the application filed by the petitioner under Order 39 Rules 1 and 2 CPC vide aforesaid impugned orders Annexures P-5 and P-7.

Learned counsel for the petitioner/plaintiff submits that the Courts below have failed to properly consider the jamabandi for the year 2015-16 as also copy of the aks shajra as well as other record produced by the petitioner in the form of sale deed, copy of khasra girdwari, site plan and copy of mutation etc. Learned counsel further submits that copy of mutation dated 22.11.1990 at Annexure P-8 clearly shows that specific khasra no. 5//23/2/3/2 is shown to be in the name of the petitioner. Mutation has duly been sanctioned in favour of the petitioner qua his entire separate khasra no. 5//23/2/3/2. Learned counsel also referred to Annexure P-9 which is shajra aks of village Khanpur, Hadbast No.338, Tehsil and District Pathankot for the year 1959-60 according to subsequent mutation no.905,980.

I have heard learned Counsel for the petitioner. A perusal of the impugned orders shows that categoric concurrent findings have been recorded by both the Courts below, that as per jamabandi for the year 2015-16 the vendor

of plaintiff-petitioner namely Sardari Lal has been recorded as owner in joint possession of the suit land along with other co-sharers. Though Jamabandi for 2015-16 has not been placed on record with this Revision petition, but Counsel for the petitioner-plaintiff is unable to controvert these findings of the Courts below. In any event a perusal of the mutation at Annexure P8, records clearly in the column ‘Name and detail of cultivator – Sardari Lal co-sharer vendor in favour of Nand Kishor s/o Chanan Ram...’. Plaintiff-petitioner has not placed on record any order of partition from which this Court could have ascertained that khasra no. 5//23/2/3/2 was partitioned between Sardari Lal and his co-sharers. As such, this Court is left with no alternative but to draw the conclusion that the petitioner-plaintiff had purchased the share of vendor Sardari Lal to the extent of 1/264 share and had become co-owner in the joint possession of the suit land along with other co-sharers/ defendants/ respondents.

Accordingly, I find no merit in this revision petition and the same is hereby dismissed as petitioner has not been able to show on file that he has purchased the suit plot from Sardari Lal with specific boundaries.

Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

22.11.2022
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No