

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

CR-769-2023(O&M)

Reserved on:-29.4.2023

Date of Pronouncement:-5.5.2023

Dariya Singh

...Petitioner

Versus

Attar Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.S.K. Yadav, Advocate
for the petitioner.

Mr.Munish Gupta, Advocate
for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Attar Singh and Jogender Singh had brought a suit for grant of permanent injunction against defendant Dariya Singh on the averments that the plaintiffs along with other co-owners are in joint possession of the suit property. The defendant had already filed a suit for partition of the said land in civil Court at Narnaul. Since the defendant was desirous of raising construction over particular portion of the suit land and to install oil pump etc. on more valuable portion abutting the road changing the nature of the land itself, the plaintiffs had brought the suit in question filing an application for grant of ad interim injunction therein.

2. On being put to notice, defendant had appeared and filed written statement as well as reply to the application for grant of ad interim

injunction offering a contest. According to the defendant, the co-sharers had orally partitioned the suit property on 22.9.1991 and thereafter on 6.5.1996 and they are in exclusive possession of their shares as owners since then; the plaintiffs themselves have raised construction about 20 years back installing an oil mill; the defendant is also intending to raise construction on the portion, which has come to him in oral partition; he wants to install a CNG pump and raise construction, to which he has every right. The defendant craved for dismissal of the suit and application for grant of ad interim injunction.

3. After hearing arguments, the trial Court of Civil Judge (Jr.Divn.), Narnaul vide order dated 21.12.2022 had allowed the application for grant of ad interim injunction, in the process the defendant was restrained from raising any forcible construction over any part of or more valuable portion of the suit land in excess of his share without getting the same partitioned by metes and bounds from the competent court of law and also from digging any part of the present suit land and also from installing any gas or oil pump etc. making any underground tank in the suit land. The defendant was further restrained from ousting or dispossessing the plaintiffs from the joint use of suit land and further from alienating or leasing out or creating any charge in respect of any specific portion of the suit land in excess of his share in favour of any other person till disposal of the suit on merits.

4. Feeling aggrieved by the said order, the defendant had preferred an appeal before District Judge, Narnaul, which was assigned to Additional District Judge, Narnaul, who vide judgment dated 16.1.2023

had dismissed the appeal and affirmed the order passed by the trial Court.

5. Still feeling dissatisfied, the defendant has knocked at the door of this Court by way of filing the present revision petition, notice of which was given to the respondents, who have put in appearance through counsel.

6. I have heard learned counsel for the parties besides going through the record.

7. Ad interim injunction dealt with by Order 39 Rules 1 & 2 CPC is a discretionary equitable relief, which is to be granted by the Court keeping in view all the facts and circumstances including the conduct of the parties, if the necessary ingredients for grant thereof are fulfilled, to say the plaintiff having a good prima facie case, balance of convenience being in favour of the plaintiff and plaintiff suffering irreparable loss and injury in case of denial of ad interim injunction with all those ingredients existing conjunctively. For laying basis for grant of permanent injunction, a person approaching the Court must do so with clean hands disclosing all the material facts and if he or she tries to conceal any material fact from the Court, then such relief is not to be granted. Clause (i) of Section 41 of the Specific Relief Act provides that an injunction cannot be granted when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court.

8. Here in this case as it comes out the parties are in separate possession of the chunks of the land almost to the extent of their shares, although in the revenue record the land is still mentioned to be joint.

Though appellant Dariya Singh, who is defendant in the civil suit is said

to have filed a suit for partition, which is pending before Additional Civil Judge (Sr.Divn.), Narnaul. The pleadings of the plaintiffs are also to that effect i.e. the plaintiffs and defendant along with other co-owners being in possession to the extent of their respective shares, though the land being still joint.

9. Now the question arises as to whether the defendant can claim land in excess of his 1/3rd share or raise any sort of construction over the land in excess of his share or to change its nature by digging the same and installing underground tank etc. for storage of oil. For giving answer to this question, it has to be kept in mind that the parties have entered into a private partition on the basis of which mutation has been sanctioned. The plaintiffs have themselves installed an oil mill in the chunk of land in their possession enclosing it with a boundary wall about 20 years before filing of the suit. It being so, they cannot possibly restrain the defendant from raising any construction in the piece of land in his possession or installing any CNG pump etc.

10. On behalf of the petitioner, a submission has been made that petitioner/defendant has been allotted a CNG pump and he has to raise construction within time limit, if it is not so done, there are chances of the allotment being cancelled causing huge financial loss to the petitioner/defendant.

11. Whereas, the counsel for the respondents/plaintiffs contends that petitioner/defendant cannot be allowed to do so since in that way, he would be able to grab piece of land, which is more valuable abutting the national highway and putting of pipes and construction of oil tank in the

land in possession of the defendant would result in changing nature of that land, which may cause prejudice to the other co-sharers, if tomorrow that land falls to share of other co-sharers during partition.

12. However, I find that the plaintiffs having themselves installed an oil mill in the piece of land, which has been in their possession that too about 20 years back, they are estopped by their act and conduct from restraining the defendant from installing CNG pump on the piece of land in his possession more particularly when counsel for the petitioner/defendant has made a statement at the bar that such petitioner/defendant shall not cover area more than his share while installing CNG pump and would put the pipes and fix oil tank in an area, which is within limit of his share and if tomorrow that piece of land where the CNG pump is installed and pipes and tanks are there fall to the share of other co-sharers then he would remove the same at his own cost and expenses without claiming any damages/compensation from the co-sharers to whom that chunk of land is allotted.

13. It is a matter of common knowledge that suits/applications for partition of joint property take a very long time for conclusion because firstly preliminary decree is to be passed determining shares of the parties in the joint property and thereafter final decree is passed for partition of the joint property by metes and bounds. Both preliminary decree and final decree can be subject to filing of first appeal before District Court and second appeal before High Court and thereafter execution proceedings are required to be carried out for execution of the final decree. With the normal tendency amongst the parties challenging each and every order

affecting their rights before the High Court by way of filing revision petitions the legal battle gets dragged on for a long time. Asking the petitioner/defendant to wait for passing of final decree in a suit for partition would amount to depriving him from using the chunk of land in his possession for financial gains.

14. Under the circumstances, it would be proper and appropriate if the petitioner/defendant is permitted to install the CNG pump and to construct oil tank and put the pipes in an area, which is strictly within share of petitioner/appellant, subject to certain terms and conditions to safeguard the rights of respondents and other co-sharers. In a landmark judgment ***Bhartu Versus Ram Sarup, 1981 PLJ 204*** by a Full Bench of this Court rights and liabilities of co-sharers in the joint property were settled. It was observed that where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to anybody to disturb the arrangement without the consent of others except by filing a suit for partition. It was further observed that when a co-sharer is in possession exclusively of some portion of joint holding not more than his share then he is entitled to continue in possession till joint holding is partitioned and he can transfer that portion subject to adjustment at the time of partition. It was further observed that transferee under Section 44 of the Transfer of Property Act gets right of transfer to joint possession and to enforce partition irrespective of the fact whether property sold is fractional share or specified portion.

15. Under the circumstances, the petitioner/defendant has got a right to use the chunk of land in his possession for the purpose of

installing CNG pump etc. of course, subject to terms and conditions to be imposed by this Court.

16. The trial Court and First Appellate Court clearly fell in error in allowing application under Order 39 Rules 1 & 2 CPC filed by the respondents/plaintiffs against petitioner/defendant. Those orders are not sustainable in view of the facts and circumstances of the case because those suffer from arbitrariness having element of perversity. Therefore, the impugned orders are modified in the sense that petitioner/defendant is permitted to install CNG pump by putting pipes and constructing a tank therein and to other ancillary acts like raising construction etc. but the area to be covered must come strictly within share of the petitioner/defendant, subject to following terms and conditions:

(i) The petitioner/defendant shall furnish a written undertaking that in case the area where the CNG pump is installed, tank is constructed and pipes are buried etc. falls to the share of any other co-sharer during partition then he would remove the same without claiming any damages or compensation from the respondents/plaintiffs.

(ii) The petitioner would inform the CNG company/oil company with regard to the litigation relating to the property in question in the Court at Narnaul and the undertaking furnished by the petitioner/defendant in that respect and then the receipt of that information would be acknowledged by some responsible officer of the CNG/oil company and then such company would be debarred from initiating any legal action against the respondents/plaintiffs or persons claiming under them in any manner. The Petitioner shall

furnish an affidavit duly sworn in that respect in the trial Court within 10 days.

Subject to fulfilment of the conditions enumerated above, the petitioner/defendant is allowed to install the CNG pump, construct tank and bury the pipes, raise construction and to do all other necessary acts in the land in his possession forming part of the joint land belonging to the petitioner/defendant, respondents/plaintiffs and other co-sharers.

17. Under the circumstances, the revision petition stands disposed of in terms of the directions detailed above.

Since the main revision petition has been disposed of, the miscellaneous application(s), if any, stand disposed of accordingly.

However, nothing discussed above, shall have any bearing on the final merits of the case.

5.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No