

2023:PHHC:123096

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

CR-964-2022 (O&M)
Reserved on 08.08.2023
Pronounced on: **31.10.2023**

Balwant Rai and another Petitioners

Versus

Yishu Nanda and others Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Mrigank Sharma, Advocate, for the petitioners.

Ms. Priyanka Sud, Advocate, for respondent No.1.

GURBIR SINGH, J.

1. Challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 10.02.2022 (Annexure P-1) passed by learned Additional District Judge, SAS Nagar (Mohali) vide which the appeal (Annexure P-2) filed by the petitioners-defendants No.1 and 2 against the order dated 11.05.2021 (Annexure P-3) passed by learned Civil Judge (Junior Division), Derabassi, in an application filed under Order 39 Rule 1 and 2 CPC, has been dismissed, upholding the temporary injunction granted to respondent No.1-plaintiff.

2. Brief facts as culled out from the case are that that respondent No.1-plaintiff (hereinafter called as “plaintiff”) filed a suit against the petitioners and respondents No.3 to 5 and Kiran Chandok, respondent No.2 herein (hereinafter called as “defendants”) seeking permanent injunction

restraining the defendants from raising any type of construction on the land measuring 1 bigha 9 biswas comprised in Khewat Nos.23/22 and 24/23, Khatoni Nos.23 and 24, Khasra No.154/2(1-7), 286/42/2(0-2) as per Jamabandi for the year 2016-17 situated in the area of Village Kishanpura/54, Tehsil Dera Bassi, District SAS Nagar. The case of the plaintiff is that Smt. Usha Loganey was the owner of the suit property. She left behind two daughters, namely, Jyoti Loganey Nanda (wife of the plaintiff) and Kiran Chandok, defendant No.6. The suit land was already partitioned. The instrument of partition i.e. Sanad Taksim was already issued by the then Assistant Collector IInd Grade, Dera Bassi. After the death of Jyoti Loganey, the plaintiff, being her husband, has stepped into her shoes regarding which mutation has already been sanctioned. The Will was executed by Usha Loganey bequeathing her properties in favour of plaintiff and defendant No.6. Litigation regarding the same between the plaintiff and defendant No.6 is already pending. Defendants No.1 to 5 are illegally raising construction over the suit property.

3. Defendant No.6 was proceeded against ex-parte.

4. Defendants No.1 to 5 contested the case. The case of defendants No.1 and 2 is that they purchased land vide sale deed dated 19.12.2019 measuring 2 bighas 1 biswas 15 biswasi of land with specific khasra numbers including the suit land along with other khasra numbers of said land after verifying the revenue record and they are the bonafide purchasers. They spent huge amount on construction. There is no fault on their part. The partition, if any, effected has not been implemented till that time in the revenue record. The defendants have constructed 14 duplexes flats after

getting site plan sanctioned from the Municipal Council, Zirakpur. Neither plaintiff nor any other person interfered in the peaceful possession of the defendants or in the construction raised by the defendants. Defendants No.1 and 2 being owners of the suit property have been raising construction legally.

5. The plaintiff filed an application under Order 39 Rule 1 and 2 CPC restraining the defendants from further construction as well as from selling/transferring any flats or villas till disposal of the case. The said application was allowed vide order dated 11.05.2021 passed by the learned trial Court and the appeal against the said order was also dismissed vide order dated 10.02.2022. It is the said order which has been challenged in this revision petition.

6. Learned counsel for the petitioners-defendants No.1 and 2 has argued that petitioners-defendants No.1 and 2 are the bonafide purchasers of suit property on the basis of sale deed dated 19.12.2019. The petitioners are raising construction after getting permission from the government authorities. The instrument of partition/Sanad Taksim has not been implemented, so the plaintiff is only co-sharer in the property. Simple suit for injunction against the co-sharer is not maintainable. In the jamabandi (Annexure P-8), the petitioners are also shown as co-sharers of the suit property. Since the title of the plaintiff over the suit property is not clear and the same is being contested by the other members of his matrimonial family, so suit for injunction was not maintainable. No prayer was made in the application regarding alienation but learned courts below also restrained defendants No.1 and 2 from alienating the property. Stay is already granted

against sanction of mutation. Learned counsel has relied upon authorities of Hon'ble Supreme Court of India in *Smt. Sawarni Versus Smt. Inder Kaur, 1997(1) R.C.R. (Civil) 41; Anathula Sudhakar Versus P. Buchi Reddy (dead) by LRs and others, 2008(2) R.C.R. (Civil) 879* and of this Court in *Karam Singh and another Versus Lakhbir Kaur and others, 2010(50) R.C.R. (Civil) 972; Bachan Singh Versus Swaran Singh, 2000 (3) R.C.R. (Civil) 70.*

7. Learned counsel for the plaintiff-respondent No.1 submits that well reasoned order has been passed by the courts below. The petitioners-defendants No.1 and 2 are the purchasers of the property. Even if they have purchased specific khasra numbers, then sale of specific numbers is only sale of share of the property. The property of Smt. Usha Loganey is inherited by the wife of the plaintiff and defendant No.6. Mutation No.902 was duly sanctioned regarding inheritance of Usha Loganey. Wife of plaintiff, Jyoti Loganey, was never ousted from possession of the suit property. The possession was joint. Plaintiff inherited suit property from his wife and has stepped into her shoes, so defendants No.1 and 2, who are purchasers of property from co-sharer has no right to change nature of the suit property and diminishing its value and utility without getting the land partitioned. She has also placed reliance on the case *Bachan Singh (supra)* as also relied by learned counsel for the petitioners-defendants No.1 and 2, which is Division Bench authority of this Court. Reliance is also placed upon the judgments of this Court, *Rishal Singh and others Versus Shri Bhagwan and another, Law Finder Doc ID # 129530; Nazar Mohd. Khan Versus Arshad Ali Khan and others, 1996(1) PLR 334* and *Dalip Singh Versus Surinder Jain,*

Law Finder Doc ID # 1843418.

8. I have heard the submissions of learned counsel for the parties.

9. There is no dispute that the suit property was owned by Usha Loganey. She left behind two daughters, one Jyoti Loganey Nanda and Kiran Chandok. Usha Loganey died on 10.05.2015 and her daughter Jyoti Loganey Nanda died on 14.09.2015. The plaintiff is the husband of Jyoti Loganey. As per jamabandi for the year 2016-17 (Annexure P-8), it is proved that mutation No.902 regarding her inheritance was also sanctioned, but as per remarks column in the jamabandi, said mutation was stayed by the Court in other litigation. No doubt instrument of partition has been finalized, but there is nothing on record that Sanad Taksim is implemented. As per the provisions of Section 121 of the Punjab Land Revenue Act, 1887, Sanad Taksim is required to be implemented within three years of the passing of the same. So, it cannot be said that severance of status has taken place on the basis of instrument of partition. So, the parties are prima facie in joint possession of the suit property. The question is whether the petitioners-defendants No.1 and 2, who are transferee from co-sharers, can make construction on the joint property.

10. In ***Bachan Singh's case (supra)***, in para No.15, it is held as under:-

“15. On a consideration of the judicial pronouncements on the subject, we are of the opinion that:

(i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of

the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession.

(ii) Mere making of construction or improvement of, in, the common property does not amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which is detrimental to his interest.”

11. In ***Dalip Singh's case (supra)***, it is held by this Court that if by act of co-owner in possession, value or utility of property is diminished, then a co-owner out of possession can certainly seek injunction to prevent diminishing of the value and utility of the property. In the case, ***Anathula Sudhakar (supra)***, it has been held that where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession. It is further held that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of plaintiff to the property. In the

case, *Karam Singh and another (supra)* as relied by the learned counsel for the petitioners-defendants No.1 and 2, it is held that a co-sharer cannot seek injunction against other co-sharer who happens to be in exclusive possession of the land to the exclusion of other co-sharers. The judgment relied in *Smt. Sawarni's case (supra)* is not applicable to the present case since no cloud is cast in these proceedings on the title of the plaintiff. The plaintiff is in joint possession of the property. There is nothing in the file that plaintiff is ever excluded from possession. The defendants No.1 and 2 have purchased property from co-sharers. They want to build flats and to sell to others. In other words, they want to earn profits at the cost of other co-sharers. Such a construction will definitely diminish the value and utility of the joint property.

12. In the case in hand, if any construction is raised by the petitioners-defendants No.1 and 2 on a portion of the suit land, without the land actually being partitioned, then the same is likely to adversely affect the rights of the plaintiff. Therefore, both the courts below have rightly restrained the petitioners-defendants No.1 and 2 from raising the construction till disposal of the suit. Thus, this Court does not find any ground for interference in this revision petition and the same is, accordingly, dismissed.

13. However, anything stated above shall have no effect on the merits of the case before the trial Court.

(GURBIR SINGH)
JUDGE

October 31, 2023

sanjeev

Whether speaking/reasoned:

Yes

Whether reportable:

Yes