

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2022-2020 (O&M)
Date of Decision: April 12, 2023

Randhir Singh and others

...Petitioners

Versus

Om Parkash

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sudhanshu Makkar, Advocate
for the petitioners.

Mr.Mani Ram Verma and Mr.Nipun Verma, Advocates
for the respondent.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 17.06.2020 (Annexure P-4) passed by lower Appellate Court, whereby, an appeal filed by the respondent-plaintiff against the order dated 11.06.2020 (Annexure P-3) passed by learned Addl. Civil Judge (Sr. Divn.), was allowed and consequently, the application filed by the respondent-plaintiff under Order 39 Rule 1 and @ CPC, was allowed.

The facts, as culled out, from the paperbook are that, initially, Om Parkash, son of Moji Ram had filed a suit against Randhir Singh, Maan Singh, Mewa Singh, Vijay Singh, Ramesh and Smt.Santo-defendants, who are the petitioners, in the present revision petition, thereby, seeking issuance

of permanent injunction to restrain the defendants from interfering into joint possession of the land measuring 7 Kanals 7 Marlas, as detailed in the headnote of the plaint, as per Jamabandi for the year 2013-2014 and further to restrain the defendants from changing the nature of the suit land in any manner and restraining from raising any type of construction on the suit land and further to restrain them from depriving the plaintiff from the joint possession of the suit land.

In the suit, it is averred that the agricultural land, as detailed in the headnote of the plaint, is joint of the parties and has not been partitioned, so far. The plaintiff had filed an application for partition of the same before the Assistant Collector IIInd Grade, Tosham, which is pending. The suit land is a valuable piece of land and the same abuts on the northern side of the *pucca* road, which leads from Siwani to Bhiwani. The plaintiff, defendants and other co-sharers are joint owners in possession of the suit land and no one is in specific possession over any part of the suit land. The defendants are bent upon to take forcible possession of the joint land and also bent upon to raise construction on the suit land. They have extended threats to raise construction and to take exclusive possession of the suit land, whereas, the defendants have no right to do so. Along with the suit, an application under Order 39 Rule 1 and 2 CPC was filed.

The defendants (present petitioners) had made appearance. Defendant No.5 had filed the written statement, wherein, it was averred that the defendants are owners in possession of the suit land and the plaintiff is co-sharer in the suit land, with the defendants and one co-sharer, cannot claim injunction against other co-sharers and only remedy of

partition is available. Even, the remaining defendants adopted the written statement/reply, filed by defendant No.5.

After hearing learned counsel for the parties and on perusal of the material on record, vide order dated 11.06.2020, the application under Order 39 Rule 1 and 2 CPC was disposed of, while making observations, as herein given:-

“the parties to the suit are directed not to raise any construction on the suit property, beyond their share and if any construction is raised, the same shall be at its own risk and cost and the same shall not be deemed the proof of possession in the partition proceedings and the same shall be subject to the partition also. It was also observed that the parties to the suit shall not raise any construction on the suit property which will change the nature of suit property and which will diminish the use, utility and value of the suit property.”

Feeling aggrieved by the aforesaid order, plaintiff-respondent had filed an appeal, which was accepted by learned lower Appellate Court, vide impugned order dated 17.06.2020 and the order passed by learned Addl. Civil Judge (Sr. Divn.) was set aside.

Resultantly, the injunction application filed by plaintiff-respondent Om Parkash was allowed and the defendants-petitioners were restrained from raising any kind of construction over the suit land, till the decision of the suit.

Feeling aggrieved by the aforesaid acceptance of the appeal, the petitioners-defendants have filed the present revision petition.

It is now submitted by learned counsel for the petitioners that in view of the averments made in the plaint, written statement was filed on behalf of petitioner-defendant No.5, which was adopted by other defendants-petitioners, wherein, they had asserted about them to be owners in possession of the suit land. It was pleaded that plaintiff-respondent has no concern or connection whatsoever with the ownership and possession of the suit land.

However, at this stage, it is submitted by learned counsel for the petitioners that plaintiff-Om Parkash, had not approached the Court with clean hands and thus, he is not entitled to relief of injunction, which is discretionary and equitable relief. Learned counsel for the petitioners has brought to the notice of this Court that suit was filed by Om Parkash, thereby, asserting his interest in the suit land, on the basis of Jamabandi for the year 2013-2014 and only on this account, he had sought temporary restraint order against the present petitioners-defendants. However, the said suit was filed in the year 2020 and at that time, Jamabandi for the year 2018-2019 had already been complied, which is Annexure P-5.

Also, it is submitted that prior to the filing of the suit, Om Parkash, who had 11/98 share in the suit property, had transferred the said share in the family transfer, vide deed No.3503 dated 01.02.2019. Even, mutation has been sanctioned, on the basis of the same, copy whereof is Annexure P-6. In the light of the same, it is submitted that plaintiff-Om Parkash had not approached the Court, with clean hands and had suppressed the fact of his share in the land in question, having already transferred in the name of his sons, Parveen Kumar and Dushyant Kumar.

In view of the submissions made by learned counsel for the petitioners, on query by the Court, learned counsel for the respondent had categorically conceded that suit had been filed, on the basis of Jamabandi for the year 2013-2014 and this fact is also evident, from the copy of the plaint, which is Annexure P-1. Learned counsel for the respondent also conceded about the share of the suit land, having transferred in the name of Parveen Kumar and Dushyant Kumar, sons of Om Parkash, on 01.02.2019. He did not dispute about the sanctioning of the mutation, as evident from Annexure P-6.

However, in the given circumstances, learned counsel for the respondent-plaintiff has submitted that Om Parkash has since died and his sons have already been impleaded as his LRs, in the suit, before the lower Court and considering this fact, even an application under Order 1 Rule 10 CPC has been filed, which is pending adjudication, before the lower Court. He submits that now sons of the plaintiff, have stepped into his shoes and therefore, it cannot be stated that plaintiff has no right to pursue the suit.

However, the submission, so made by learned counsel for the respondent-plaintiff is palpably wrong. Firstly, it is pertinent to mention that it is not mandatory that for mere asking, such relief should be given. The injunction is personal right under Section 41(j) of the Specific Relief Act, 1963; the plaintiff must have personal interest in the matter. However, from the perusal of Annexure P-6, it is evident that prior to the institution of the suit in the year 2020, by way of family transfer deed bearing No.3503 dated 01.02.2019, Om Parkash, son of Moji Ram, who is the plaintiff and who had 11/98th share in the suit land, had transferred this

share in equal parts, to his sons Parveen Kumar and Dushyant Kumar.

Consequently, it stands established that at the time of filing the suit, the interest of right is not shown to be in existence of the plaintiff-Om Parkash and precisely, on this account, the threat, as submitted by the plaintiff, cannot be protected by way of injunction.

Even, now it is submitted that sons of Om Parkash have already been impleaded as LR's, before lower Court and they have stepped into the shoes of their father. May it be so, before the lower Court, the sons have been impleaded as LR's, but however, they have only stepped into the shoes of Om Parkash and they are not having any right in their individual capacity, in the present suit. If they have stepped into the shoes of their father Om Parkash, then also, they have to pursue the suit, vis-a-vis, the right of Om Parkash, if any.

However, as already observed aforesaid, Om Parkash did not had any interest in the suit property, at the time of institution of the suit. In view of the aforesaid fact situation, when Om Parkash did not have any interest in the suit property and the filing the suit, on the basis of the Jamabandi for the year 2013-2014, whereas, Jamabandi for the year 2018-2019 (Annexure P-5) was in existence, reflects about the respondent-plaintiff to have not come to the Court with clean hands. The order of injunction is discretionary and equitable relief. Considering the aforesaid facts, when the plaintiff was not having any interest in the suit land and he also suppressed the material fact of transfer of land, in favour of his sons, prior to the institution of the suit, he is not entitled to the discretionary and equitable relief.

Consequently, the present revision petition is accepted and the orders dated 11.06.2020 and 17.06.2020 passed by learned Addl. Civil Judge (Sr. Divn.) and learned lower Appellate Court, respectively, are hereby set aside and the application under Order 39 Rule 1 and 2 read with Section 151 CPC, is dismissed.

April 12, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No