

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2926-2023 (O&M)
Date of decision: 11.05.2023
...Petitioners

Satnam Singh and another

VS

Gurchetan Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Dinesh Nagar, Advocate,
For the petitioners.

ARUN MONGA, J. (ORAL)

Revision petition herein *inter alia* is to set aside impugned order dated 05.01.2023 (Annexure P-5) passed by learned Additional District Judge, SBS Nagar whereby learned Appellate Court allowed the appeal (Annexure P-4) filed by plaintiff/respondent No.1 herein challenging order dated 24.03.2022 (Annexure P-3) passed by learned Trial Court under Order 39 Rules 1 and 2 CPC.

2. Succinct facts first.

2.1. Plaintiff/respondent No.1 herein filed suit for permanent injunction restraining defendants (petitioners and pro forma respondent No.2 herein) from interfering in possession of plaintiff and dispossessing him illegally and forcibly except in due course of law, from his house under construction, lintel of roof of ground floor and the plot as shown in red colour in the site plan attached.

2.2. Plaintiff/respondent No.1 herein and defendant No.1/petitioner No.1 herein are real brothers. Plaintiff/respondent No.1 has been residing abroad for the last many years and defendant No.1/petitioner is residing in village Bajjon, Tehsil Nawanshahr. After the death of Harbhajan Singh,

plaintiff and defendant No.1 being sons, Gurbaksh Kaur wife, Kulwinder Kaur and Bhupinder Kaur being his daughters, succeeded to the estate of late Harbhajan Singh. During his lifetime Harbhajan Singh entered into oral partnership with other co-sharers and thereafter he raised construction over his portion. After the death of Harbhajan Singh, a partition of the estate left by Harbhajan Singh including the residential house, was effected between plaintiff and defendant No.1 with the consent of other co-sharers vide writing dated 03.03.2011.

2.3. As per the said partition, the ancestral house and *haveli* constructed by Harbhajan Singh was given to defendant No.1 and plaintiff was given adjacent plot with liberty to construct his house over the same. Plaintiff entrusted the work of construction to his brother Satnam Singh and sent him huge amount for raising construction up to the first storey. After completion of ground floor, defendant No.1 started asking plaintiff to remit more money for undertaking construction of first storey.

2.4. Plaintiff asked defendant No.1 to render the accounts to which defendant No.1 refused. Thereafter, at the instigation of defendant No.1, Bhupinder Kaur, sister filed a civil suit against plaintiff and she was able to get status quo order vide which construction work was brought to a stand still but the application of Bhupinder Kaur for *ad interim* injunction was dismissed.

2.5. After vacation of status quo order plaintiff came to India for completion of his house but defendants were threatening to interfere and dispossess plaintiff from the suit property. Thereafter plaintiff filed an application under order 39 Rules 1 and 2 read with Section 151CPC which was dismissed by learned trial Court.

2.6. Aggrieved against the above order, plaintiff went in appeal and the same was allowed vide impugned order dated 05.01.2023.

3. Learned counsel for petitioners would contend that order passed by learned trial Court is well-reasoned and does not require interference. Suit property is still joint and has not been partitioned yet. Respondent/defendants being co-sharers have right to use the property in the manner they like.

3.1. Learned counsel for petitioners would further urge that learned Appellate Court wrongly relied upon alleged family settlement dated 03.03.2011 wherein admittedly all the legal heirs of Harbhajan Singh are not the signatories. Even the evidentiary value of the alleged settlement is yet to be ascertained and proved by leading cogent and trustworthy evidence.

4. I have heard learned counsel for petitioner and gone through the case file.

5. Order assailed herein *inter alia* is premised on the following reasoning:

10. For the purpose of disposal of application under Order 39 Rules 1 & 2 read with Section 151 CPC, Court has to determine the controversy in dispute and to evaluate the evidence on record in the light of three ingredients i.e. prima-facie case, balance of convenience and irreparable loss.

Here in the present case, in order to prove his prima-facie case, appellant/plaintiff has placed on record writing dated 03.03.2011, which was effected between the plaintiff/appellant Gurchetan Singh and defendant/respondent Satnam Singh. On bare perusal of the same it reveals that this partition has been effected in the presence of Village Panchayat/respectable and bear their signatures. It has further been mentioned in this writing that appellant/plaintiff is at liberty to construct his house upon the land given to him and it has further been mentioned that till Gurchetan Singh construct a house, a room has been given to plaintiff/appellant in old house. Though, all the class-I legal heirs of Harbhajan Singh are not signatory to this agreement but defendant/respondent Satnam Singh being signatory to this deed of partition, can not disturb the arrangements arrived at between the brothers for

the purpose of enjoying and using the joint property. Even otherwise, if other co-sharers have got any objection to the agreement of partition dated 03.03.2011, then they are at liberty to come forward and raise any objection as per law. But at this stage, defendant/respondent being signatory to this agreement has got no right to interfere in the construction being raised by plaintiff/appellant over the land, which is in his possession as per this agreement.

11. Further, the copies of receipts and photographs have been placed on record showing the construction of the house up to first storey. Since part construction shown to have been taken place over the portion, which is allegedly in the exclusive possession of appellant/plaintiff, therefore, it is felt that in case, defendants/respondents are not restrained from interfering into the construction of plaintiff/appellant, it is likely to cause serious prejudiced to the right of appellant/plaintiff to enjoy his possession over his exclusive portion out of the joint property. Balance of convenience also lies in favour of appellant/plaintiff. Therefore, in these circumstances, present appeal is hereby allowed and defendants/respondents No.1 and 2 are hereby restrained from dispossessing the appellant/plaintiff illegally, forcibly except in due course of law and further they are restrained from creating any objection/hindrane in any way of the plaintiff/his attorney for carrying out the construction work of the house of plaintiff constructed on the portion of khasra No.15//2/2 and 15//9, khata No.175/238 and 177/245 entered in jamabandi for the year 2018-19, situated at Village Bajjon (H.B.No.184) Tehsil Nawanshahr till disposal of main case. However, it is made clear that above said observations are only for the disposal of present appeal and same shall not be binding upon learned Trial Court while deciding the main case/suit. Parties to bear their own costs. Memo of costs be prepared accordingly. Trial Court record be sent back with the copy of this judgment. Parties through their counsel are directed to appear before learned Trial Court on the date fixed. File be consigned to record room.”

6. Contentions raised before me were also raised before the Ld. First Appellate Court which were repelled giving valid reasons. I am inclined to agree with the same and I find that no grounds are made out to interfere with the well-reasoned order passed by learned Appellate Court. In any case, the impugned order, is merely interim in nature and subject to the final outcome of the suit. No prejudice would be caused to the either side, if status quo *qua* existing construction of the house is maintained as well as the possession of plaintiff is protected during pendency of the trial.

- 7. No grounds are made out to interfere.
- 8. Dismissed.
- 9. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

11.05.2023
vandana

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