

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

Sr. No.114

CR-3038-2023 (O&M)

Date of Decision: 16.05.2023

Sarabjit Kaur @ Sarbjit Kaur

...Petitioner

Versus

Gram Panchayat of Village Lehra Bega and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Deepak Aggarwal, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 22.02.2023 (Annexure P-8), whereby the application filed by petitioner/plaintiff under Order 39 Rules 1 & 2 CPC for grant of ad interim injunction in a suit filed by her, was dismissed. Challenge is also made to order dated 05.05.2023 (Annexure P-9) whereby the appeal filed by petitioner against order dated 22.02.2023, was dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Petitioner is owner in possession of land measuring 1 Kanal 11 Marlas bearing Khewat No.608/544 in Khatoni No.821 and Khasra No.59//7/3, which consists of a cattle room, space open to sky Khurli, bathroom, store and gate in Village Lehra Bega, Sub Tehsil Nathana, District Bathinda. It is

submitted that there is no dispute between the parties with regard to the ownership and possession of petitioner/plaintiff of Khasra No.59//7/3.

2.2. In front of said land of the plaintiff, there is an open space, which falls into Khasra No.59//8. It is submitted that this Khasra No.59//8 is recorded as Shamlat Thula in the revenue record. However, the said land was in cultivating possession of Harnek Singh son of Sohna Singh, Naranjan Singh son of Sohna Singh, Dhanno wd/o Sohna Singh and Shyam Singh son of Sohna Singh to the extent of 1/4th share each and said persons i.e. Harnek Singh etc. have constructed their house, which is recorded as a *gair-mumkin makaan* (house) in the revenue record. The aforesaid Harnek Singh etc. sold the said land measuring 2 Kanals 12 Marlas falling in Khasra No.59//8 to the father-in-law of petitioner, as per agreement dated 22.12.1984 (Annexure P-1) and since then the petitioner's father- in-law and thereafter her husband is in possession of the said land bearing Khasra No.59//8 and on which the house is in existence.

2.3. It is further submitted that as per Jamabandi for the year 2018-2019, the said Harnek Singh and others have been shown in the cultivating possession of Khasra No.59//8 land measuring 2 Kanals 12 Marlas and they have constructed a house over the same. Respondents/defendants started raising construction on the land which is lying vacant outside the house of petitioner/plaintiff and thereby causing obstruction to the ingress and egress of petitioner/plaintiff to her house as the defendant/respondents are raising construction in such a manner that the gate of the house of petitioner-plaintiff shall be closed or an obstruction would be caused to ingress and egress to the house.

2.4. Petitioner/plaintiff filed a suit for permanent injunction for restraining defendant/respondents from forcibly closing the gate of house of petitioner/plaintiff. Petitioner also moved an application under Order 39 Rules 1 & 2 CPC for grant of ad interim injunction in her favour.

2.5. Upon notice, the defendants/respondents appeared in the said suit and filed their written statement as well as reply to the application under Order 39 Rules 1 & 2 CPC, accordingly to which defendant/respondents are raising construction in Khasra No.59//8.

2.6. Petitioner/plaintiff filed a replication to the written statement to the effect that defendants have no concern with Khasra No.59//8 as no document in support thereof has been placed on record, wherein Khasra No.59//8 is in possession of father-in-law of plaintiff, namely, Amar Singh (now deceased) and his brother Gurcharan Singh in equal shares as per agreement dated 22.12.1984 with specific boundaries and plaintiff has raised constructions on the said land and is residing there. The land where defendants/respondents are raising construction is measuring 14 Marla, which exclusively belongs to Bija patti of village Lehra Bega popularly known as Thulianwali Di and the same was constructed by the Anganwari about/in the year 2007-08 and they stayed/worked there for about one year and thereafter, they shifted their Anganwari Centre at Nanaksar Dharmshala near Cooperative Society, Lehra Bega and now the same is lying vacant land. The defendants/respondents have no concern with the said land, which was being used by Anganwari workers and defendant/respondents want to grab the said land illegally and forcibly.

2.7. Vide impugned order, the application under Order 39 Rules 1 & 2 CPC, filed by petitioner was dismissed by Ld. Trial Court.

2.8. Aggrieved by impugned order, the petitioner filed an appeal before Ld. Additional District Judge, Bathinda but the same has also been dismissed.

3. Learned counsel for petitioner would argue that Ld. Courts below have failed to appreciate the fact that respondents/defendants have not placed on record any document to show that Khasra No.59//8 falls in their ownership or it vests with the Panchayat. On the contrary, as per Jamabandi (Annexure P-2) and Khasra Girdawari (Annexure P-10), there is a *gair mumkin* house constructed on the land falling in Khasra No.59//8 and therefore defendants cannot raise any construction as the said khasra number is not vacant land. He would further argue that gate of house of the petitioner is constructed on the land bearing Khasra No.59//7/3 and therefore defendant-Panchayat has no authority to raise any kind of construction in front of the gate of house of the petitioner and if they are allowed to raise further construction during pendency of suit, it will give rise to multiplicity of litigation between the parties.

4. Impugned order dated 05.05.2023 (Annexure P-9) passed by learned Additional District Judge, Bathinda, is premised, *inter alia*, on the following reasoning:

“xxxx xxxx xxxx xxxx

12. Now coming to the facts of the present case, the same pertains to a dispute relating to two khasra No's. 59//7/3 min and 59//8 in village Lehra Bega. It has been admitted by Learned Counsel for the respondents/defendants during the course of arguments that khasra No.59//7/3 min is owned and possessed by plaintiff appellant Sarabjit Kaur. The said situation is also prima facie clear from the Jamabandi for the

year 2018-2019 as well as from the khasra girdawari from Sauni 2019 till Sauni 2022. It is also not disputed by learned counsel for the defendants/respondents that the plaintiff/appellant has built a house over the said khasra number. It is further not disputed by both the parties that there is a room adjoining the said house of plaintiff which was left for Anganwari. Now the version of the plaintiff/appellant is that defendants are trying to raise a boundary wall at point A to C as depicted in the site plan filed by her which will lead to blocking of the gate 11'-6" wide of their house which is near point C in the said site plan. On the other hand, it is version of the defendants/respondents that they are raising the said wall around the room which was left for Anganwari work in khasra No.59//8 which is owned and possessed by defendant Gram Panchayat. However, it has been alleged by the plaintiff/appellant in the replication and has also been argued by learned counsel for the appellant that the said khasra No.59//8 is not owned by Gram Panchayat and is actually jointly owned and possessed by father-in-law of plaintiff namely Amar Singh and his brother Gurcharan Singh vide agreement dated 22.12.1984. However perusal of the Jamabandi for the year 2018-2019 reveals that said khasra No.59//8 is reflected to be in the name of Shamlat Thula Guruditta Hasb Rasb Jaddi..... As per Section 2(g)(3) of the Punjab Village Common Lands Act Regulation 1961, Shamlat Deh includes land described in revenue record as Shamlat tarafs, pattis, pannas and Tholas and used according to revenue record for the benefit of the village community. Section 4 of the said Act further provides that all the rights, title and interest qua Shamlat Deh shall be vested in the Gram Panchayat, at the commencement of the said Act. It has also been laid down by Hon'ble Punjab and Haryana High Court in "Mahabir Singh and others vs Financial Commissioner. Haryana and others (P&H): Law Finder Doc id @ 251515" and "Gram Panchayat of village Bishangarh Vs State of Pujab and others (P&H) Law Finder Doc Id 346007 that the land included in definition of "Shamlat Deh" vests in Gram Panchayat. It is the Gram Panchayat which has the right of control and management of the said land. Thus prima facie in this case in view of the aforesaid law, the defendant Gram Panchayat of village Lehra Bega is having control and management of said khasra no.59//8 and it prima facie has all the right to raise a wall in the said land. There is also no prima facie proof of the fact that plaintiff is in possession of said Khasra No.59//8 as is alleged by her. The agreement dated 22.12.1984 upon which the plaintiff-appellant is strongly relying to claim the said Khasra No. 59//8 to be ownership of her father-in-law Amar Singh and his brother Gurcharan Singh,

is an unregistered document and as such prima facie it does not affect the immovable property comprised therein in any manner in view of section 49 of The Registration Act, 1908. In addition to this, this court is of the opinion that there is no material on record at this stage which prima facie establishes that the gate in question in the house of the plaintiff opens in her own land in khasra No.59//7/3 min or in any public passage. Thus in the opinion of this Court learned trial court has correctly appreciated that the plaintiff prima facie has no right to restrain the defendants from raising the wall in question from point A to C. Learned trial court has also rightly observed that there is no material to prima facie establish that there is any street in front of the disputed gate at point C as shown by the plaintiff in the site plan. So far as the house of plaintiff in khasra No.59//7/3 min is concerned, since its existence has not been disputed by learned counsel for the respondents/defendants during the course of arguments, so at this stage appellant/plaintiff prima facie has no threat from the defendants qua the said house also. The appellant/plaintiff is also not going to suffer any irreparable loss by the refusal to grant ad- interim injunction as the appellant/plaintiff is having a gate at the front of her house also which opens on the main road. As such in view of the aforesaid discussion, this court is of the opinion that appellant is not entitled to the relief of interim injunction.

13. Although, learned counsel for the plaintiff-appellant in support of his arguments relied upon the law laid down by Hon'ble Punjab and Haryana High Court in "State of Punjab and others Vs Bhambool Singh and Ors: Law Finder Doc Id # 2164929, but the same is not applicable to the facts of the present case.

14. In view of my aforesaid detailed discussion, this court is of the opinion that there is no illegality or material irregularity in the impugned order. Accordingly, the present appeal is hereby dismissed and the impugned order is upheld. However, any observation of this court in this order shall not be construed as opinion on merits. The lower court record be returned along with copy of this Judgment. This appeal be consigned to the record room."

5. Aforesaid contentions raised before me were also raised earlier but repelled by Ld. Courts below giving reasons therefor. I am inclined to

agree with the same. There is no room for interference in the aforesaid valid reasons recorded by Ld. Courts below. I see no grounds to interfere.

- 6. Dismissed.
- 7. Pending application(s), if any, shall also stand disposed of.

May 16, 2023
ashish

(ARUN MONGA)
JUDGE

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