

2023:PHHC:046847

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

**COCP No.1817 of 2020 (O&M)
Reserved on 28.03.2023
Date of decision: 10.04.2023**

Naresh Kumar and others

....Petitioners

Versus

Sohan Lal and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ashish Aggarwal, Sr. Advocate
with Ms. Malika Aggarwal, Advocate
for the petitioners.

Mr. Pawan Kumar, Sr. Advocate
with Mr. Surya Kumar, Advocate
Ms. Vidushi Kumari, Advocate
and Mr. Ravinder Chaudhary, Advocate
for respondents No.1 to 5.

Mr. P.K. Longia, DAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

The petitioners alleges violation of the order dated 01.02.2016 passed in RSA No.2080 of 2011, titled as “Naresh Kumar and others vs Sohan Lal and another”.

Brief facts of the case are that the petitioners and respondents No.1 to 5 have a common ancestor namely Ruhla. Ruhla has two sons namely Manglu i.e. father of the petitioners as well as respondents No.1 and 2 and grandfather of the other respondents.

Manglu had a brother namely Pitambar, who was issueless and had

2023:PHHC:046847

suffered a decree dated 02.05.1988 in favour of the respondents No.1 and 2 i.e. Sohan Lal and Satpal. Later on, the petitioners challenged the said decree by way of filing a civil suit No.540 of 2001. The Civil Judge vide its judgment dated 30.04.2008 set-aside the decree and held that the defendants (respondents No.1 and 2 herein) are owners in possession along with the petitioners/plaintiffs to the extent of 1/5th share each.

In an appeal filed by respondents before the Lower Appellate Court vide judgment and decree dated 04.02.2011, the appeal was partly allowed observing that no legal ground to set-aside the impugned decree was made out, however, in view of compromise (Ex.C-1), arrived at between Sohan Lal (respondent No.1) and the plaintiffs (petitioners), the suit was partly decreed and it was held that the decree qua the share of Sohan Lal, is set-aside, however, Satpal was declared owner in possession of the remaining ½ share of the suit land, which was previously owned by Pitambar, as detailed in the plaint. Thereafter, both the parties filed RSA Nos.2080 and 3558 of 2011.

In RSA No.2080 of 2011, filed by Naresh Kumar, on 01.02.2016, status quo regarding the possession was ordered to be maintained. This order was directed to continue on the subsequent dates and finally, both the said RSA Nos.2080 and 3558 of 2011, were admitted on 01.09.2018.

Learned senior counsel for the petitioners has argued that as per the judgment passed by the Civil Court under Issue No.2, the petitioners/plaintiffs are held to be in possession of the suit property,

2023:PHHC:046847

which was previously owned by Pitambar, however, a perusal of the judgment in paragraph 22, would show that the trial Court has held that the plaintiffs are entitled to inherit the suit property along with the defendants in equal share and the defendants are restrained from alienating the suit property and neither any injunction regarding the possession was granted nor any specific finding in favour of the petitioners was recorded.

A perusal of the judgment of the Lower Appellate Court would show that respondent No.2 Satpal is held to be owner in possession of the $\frac{1}{2}$ share of the land owned by Pitambar, whereas respondent No.1 Sohan Lal, has entered into a compromise (Ex.C-1) with the plaintiffs but no specific finding was recorded that the possession was handed over to the petitioners as per para Nos.26, 31 and 33 of this judgment. Needless to say (Ex.C-1) is not placed on record of this contempt petition.

Learned senior counsel for the petitioners has further submitted that in garb of the status quo order, the respondents are trying to take forcible possession and for that, the petitioners have filed numerous applications, (copy of which are attached), that they are owner in possession and the respondents are harvesting their crops forcibly

Reply by way of affidavit of respondents No.1 and 2 has been filed, denying the averments of the petitioners that they are in possession of the property, which is subject-matter of the suit i.e. the land previously owned by Pitambar.

2023:PHHC:046847

Learned senior counsel for the respondents has submitted that at no point of time, they have admitted the possession of the petitioners as previously, Pitambar was owner in possession and thereafter, when the decree was passed in the year 1988, mutation was sanctioned and revenue record was corrected in the name of respondents No.1 and 2. It is also submitted that even previously, the petitioners had filed COCP No.4012 of 2019, which was admitted to be heard with RSA No.2080 of 2011 on 02.12.2019.

In reply, learned senior counsel for the petitioners has referred to the affidavit of the Superintendent of Police (Security), Karnal, wherein in Para 4, it is stated that when a complaint was received, it was entrusted to one ASI Ashok Kumar of Police Post Manglora, Police Station Madhuban, District Karnal, who went at the spot and recorded the statement of both the parties as well as the neighbours and as per the statement, the respondents No.1 and 2 or any other persons had never entered into the possession of the petitioners after passing of the order dated 01.02.2016.

Learned senior counsel for the petitioners has tried to interpret this report to submit that the statement of the respondents regarding non-interference of the possession of the petitioners over the suit land means admission of their possession. In para 6 again, it is stated that one another complaint was received and enquiry was conducted by ASI Mahavir Singh, in which again the statement was recorded and as per the enquiry, it is found that no one has tried to dispossess the petitioners nor any unauthorized persons have visited the

2023:PHHC:046847

land in question and no crop was harvested by the private respondents as per the allegations and thus, no action was taken against anyone.

In order to ascertain certain facts, the record of both the aforementioned RSA Nos.2080 and 3558 of 2011, was requisitioned regarding the stay/extension of the stay order as well as the enquiry report submitted by ASI Ashok Kumar, to ascertain whether the respondents No.1 and 2 have made any statement regarding the possession of the petitioners over the land in dispute, is taken on record as Annexure 'X', colly.

However, a perusal of the enquiry report, would reveal that the petitioner Naresh Kumar stated that the respondents are trying to interfere in the land, in dispute whereas in the statement of respondent No.1 Sohan Lal and respondent No.2 Satpal, a categorical stand is taken in their statements dated 15.12.2019, that their uncle (father's brother) namely Pitambar has by virtue of a decree dated 02.05.1988, had given the land to them and both the brothers are in possession over the land, which was of the share of Pitambar and they are cultivating the same and the complaint filed by the petitioners is false.

In view of the statements, it is clear that the averments made in Para 4 of the affidavit of the Superintendent of Police (Security), Karnal, is not the correct interpretation of the statement made by Sohan Lal and Satpal, during the enquiry.

After hearing the counsel for the parties and going through the record, though, there is an order of status quo regarding the possession but in view of settled law, the same is to be interpreted in

2023:PHHC:046847

terms of the judgments passed by the Courts below. As observed, neither in the judgment of the trial Court nor the Lower Appellate Court, any finding is recorded that over the disputed land (which was previously owned by Pitambar), the petitioners are in possession.

Accordingly, finding no willful disobedience, this contempt petition is dismissed.

Nothing observed herein shall be construed as an expression of opinion on merits of the case as the findings are only for the purpose of deciding the contempt petition.

(ARVIND SINGH SANGWAN)
JUDGE

10.04.2023
yakub

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