

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

CR-1725-2021(O&M)

Date of decision:-3.3.2023

Dharamvir and others

...Petitioners

Versus

Ranvir and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sanjeev Kodan, Advocate
for the petitioners.

Mr.R.A. Sheoran, Advocate
for the respondents.

H.S. MADAAN, J.

1. Being impugned in this revision petition is order dated 26.7.2021 passed by Additional District Judge, Charkhi Dadri vide which he had set aside the order passed by Addl.Civil Judge(Sr.Divn.), Charkhi Dadri dismissing the application for grant of ad interim injunction and in the process accepting that application, resultantly restraining the defendants from crating any type of interference in peaceful possession of the plaintiffs over the suit land till final decision of the case.

2. Briefly stated, facts of the case are that plaintiffs Ranvir Singh and others had brought a suit for grant of permanent injunction against defendants Dharamvir and others contending that they are in possession of the suit land since the time of their forefathers and such suit

land measuring 20 bighas 6 biswas forms part of total land measuring 558 bighas 4 biswas owned by Shyamlat Thola Deva; the plaintiffs and other proprietors are other co-sharers in that land; the predecessors in interest of the defendants, namely, Sh.Karan Singh and Sh.Ran Singh had filed a representative suit on behalf of Shyamlat Thola Deva against predecessors-in-interest of the plaintiffs seeking ejectment of the latter from Killa No.207; the said Civil Suit bearing No.630 of 1995 was dismissed on 8.11.2002, although the judgment and decree passed in that suit were challenged by way of filing an appeal but the appeal was also dismissed on 18.8.2004. According to the plaintiffs, they had harvested the crop on the suit property and had ploughed it for sowing new crop but the defendants threatened to obstruct the plaintiffs from doing so, giving rise to a cause of action to the plaintiffs to bring the suit in question. Along with the plaint, the plaintiffs had also filed an application for ad interim injunction.

3. On getting notice, the defendants put in appearance and filed written statement raising various legal objections, on merits contending that the parties to the suit along with other biswedars of Thola Deva in village Atela Khurd are co-sharers in the suit land, therefore suit against the co-sharers is not legally maintainable; the entries in the khasra girdawari are absolutely wrong and against the factual position at the spot; the suit land is Shyamlat Thoda Deva Hasab Rasad Rakba Khewat, meaning thereby that the individual khewats falling in Thola Deva are owners in possession of this land in ratio of the area of their individual khewats; the total number of biswedars of Thola Deva as per their

individual khewats are also 400 or 500 and in order to settle the controversy between the co-sharers, an application for partition was filed before Asstt. Collector IInd Grade, Charkhi Dadri; in that petition naksha 'kha' was prepared on 1.3.2009, which was confirmed by Asstt. Collector IInd Grade, Charkhi Dadri. Subsequently, Asstt. Collector IInd Grade, Charkhi Dadri vide order dated 7.9.2015 adjourned the file sine die and sought clarification from the Collector, Bhiwani, who vide his order dated 30.9.2015 directed that further proceedings in the case be taken. The defendants had approached the High Court by way of filing CWP-17052 of 2016 with regard to the partition of the land in question and the High Court vide order dated 22.7.2016 directed that partition of the suit land be done expeditiously preferably within six months. However, since Government of Haryana had issued a notification to carry consolidation proceedings in village Atela Khurd, therefore Asstt. Collector IInd Grade, Charkhi Dadri vide order dated 21.12.2016 directed the Assistant Consolidation Officer to separate the share/qurra of the applicants. The co-sharers have partitioned the land mutually in a private manner and the biswedars of Thola Deva are cultivating their share in the total land in the name of Shyamlat Thola Deva. The defendants prayed for dismissal of the suit as well as application for grant of ad interim injunction.

4. After hearing arguments, the trial Court vide order dated 7.6.2021 had dismissed the application for grant of ad interim injunction, against which an appeal has been filed, which had been allowed by Additional District Judge, Charkhi Dadri as mentioned supra.

5. Feeling aggrieved the defendants have filed the present

revision petition, notice of which was issued to the respondents/plaintiffs, who put in appearance through counsel.

6. I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the revision petition.

7. Permanent injunction dealt with by Section 38 of the Specific Relief Act, 1963 is a discretionary equitable relief, which is to be granted by the Court keeping in view the facts and circumstances of the case including the conduct of the parties and no person can claim this relief as a matter of right. For laying basis for grant of permanent injunction, a person approaching the Court must do so with clean hands disclosing all the material facts and if he or she tries to conceal any material fact from the Court, then such relief is not to be granted.

8. In the present case, the plaintiffs are admittedly co-sharers in the total land measuring 558 bighas 4 biswas in the name of Shyamlat Thola Deva. Their possession is also established from the revenue record and earlier litigation between the predecessors-in-interest of the parties. Although the defendants claimed that they are in possession of the suit but they have failed to substantiate these assertions by placing on record any document. The partition proceedings are going on. Till then the plaintiffs have certainly a right to retain possession of the suit land. The trial Court by ignoring the factual position and without appreciating the legal position on the subject properly had dismissed the application for grant of ad interim injunction, which order was not sustainable and that order was rightly set aside by learned Additional District Judge, Charkhi Dadri by way of acceptance of appeal, in the process granting ad interim

injunction to the plaintiffs.

9. Learned counsel for the revision petitioners has referred to judgments **Om Parkash Versus Rohtash and another, 2020(1) RCR(Civil)124, Ghulla Singh and others Versus Amarjit Singh, 2020(2) PLR 81, Bhartu Versus Ram Sarup, 1981 PLJ 204** and **Bachan Singh Versus Swaran Singh, 2000(3) RCR(Civil) 70** but those are not helpful to the revision petitioner in advancing their case. Rather in Full Bench judgment of this Court i.e. **Bhartu Versus Ram Sarup**(supra), which is landmark judgment, which deals with rights and liabilities of co-sharers, it has been observed that where co-owner is in possession of the separate parcels under an arrangement consented by the other co-owners, it is not open to anybody to disturb the arrangement without the consent of others except by filing a suit for partition.

10. The impugned order passed by the Additional District Judge, Charkhi Dadri is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

11. Finding no merit in the revision petition, the same stands dismissed.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

However, nothing discussion above shall have any bearing on

the final merits of the case.

3.3.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No