

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.122

Case No. : C.R.No.4057 of 2023

Date of Decision : July 24, 2023

Suresh Kumar Petitioner
vs.
Sanjay Kumar and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr.Sourabh Saini, Advocate
and Mr. Umesh Kumar Kanwar, Advocate
for the petitioner.

Mr. Munish Gupta, Advocate
for Caveator – respondent no.1.

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GURBIR SINGH, J. :

1. This revision petition has been filed against the judgment dated 31.05.2023, passed by learned Additional District Judge, Narnaul (Annexure P-5), whereby order dated 25.04.2023, passed by learned Trial Court (Annexure P-4) has been set aside.

2. Sanjay Kumar – respondent no.1, who is plaintiff before the Trial Court (hereinafter referred to as – the plaintiff) filed suit for declaration and permanent injunction against petitioner Suresh Kumar and others, who were defendants in the suit (hereinafter referred to as – the defendants). In the said suit, application was moved under Order 39 Rules 1 & 2 read with Section 151 CPC to grant temporary injunction restraining the defendants from alienating and creating any charge, raising construction, ousting the plaintiff from the property in dispute. Learned Trial Court, vide order dated

25.04.2023 (Annexure P-4) partly allowed the application and temporary injunction was granted with regard to property mentioned and shown in blue colour in the site plan and plaint of the case titled as ***Suresh Kumar etc. vs. Fateh Chand***, file no.161, date of institution 06.03.1986, date of decision 06.03.1986, wherein consent decree was passed, till the decision of the suit.

3. Plaintiff/respondent no.1, dissatisfied by the said order, filed the appeal. The learned Appellate Court, vide order dated 31.05.2023 (Annexure P-5), allowed the appeal. The order dated 25.04.2023 (Annexure P-4), passed by the Trial Court, was set aside and defendants were restrained from alienating or transferring in any manner the suit property in favour of any person in excess of their 1/5th share and from ousting the plaintiff from the joint use, possession and enjoyment of the disputed property and from raising any kind of construction thereon till the final disposal of the suit on merits.

4. Briefly, facts of the case are that originally, defendant no.12 Fateh Chand was absolute owner in actual possession of land measuring 30 marlas, on the basis of registered sale deeds. After purchasing the said property, he raised construction and left some part of the land as open space. It was self acquired property of defendant no.12. He was the eldest one amongst five brothers. His father requested him to give equal shares in the disputed property to all his brothers. An oral family settlement took place among all the five brothers and it was settled that all the five brothers would be joint owners in possession of the disputed property to the extent of 1/5th share each. Thereafter, Shyam Lal opted to transfer his 1/5th share in the name of his wife Saroj Devi i.e. defendant no.4 and defendant no.12 opted to

transfer his share in the name of his son Sanjay Kumar i.e. the plaintiff. At that time, defendant no.1 offered to get the abovesaid oral family settlement reduced into writing by way of decree passed by a Court and undertook to complete all the documentation and paper work in that regard. So, defendant no.1 asked the parties to accompany him to the Court compound, Narnaul for signing the requisite papers and without affording them an opportunity to see, read and understand the contents of various papers and site plans etc., got their signatures on various papers and further got recorded the statement of defendant no.12 before the Court and assured all of them that the disputed property had been transferred in the name of the plaintiff and defendants no.1 to 4 in equal shares i.e. 1/5th share each. Mutation No.1095 dated 25.06.1986 was also sanctioned and entries in the subsequent *jamabandis* were also recorded up to the year 2014-15. Later, defendant no.1 executed and got registered two separate transfer deeds in favour of his wife regarding his 1/5th share. Mutations were also sanctioned in favour of his wife. Thereafter, on receipt of summons of two civil cases, plaintiff came to know that a fraud was played upon him and others by procuring false, incorrect, wrong and illegal documents in the shape of plaint and site plan dated 05.03.1986 filed in ***Civil Suit No.161 of 06.03.1986*** titled as ***Suresh Kumar and others vs. Fateh Chand***, decided on 06.03.1986 and in the shape of alleged recitals of transfer of two separate shops by defendant no.1 to defendant no.5 by showing the same to be allegedly existing over a part of khasra no.209/3 and in the shape of non-incorporation of mutation no.1586 in *jamabandis* relating to the year 2014-15 and 2019-20 and also, non-incorporation of mutation no.1590 in *jamabandis* relating to the year

2019-20 and in the shape of attestation of impugned mutation no.1839 dated 19.07.2018 and in the shape of alleged partition and separation of the disputed property. On making further inquiry, the plaintiff came to know about the fraudulent proceedings conducted by defendants no.1 to 11 in the shape of execution and registration of impugned registered sale deed no.3571 dated 15.09.2021 and subsequent wrong revenue entries. Defendant no.1 cleverly got prepared the impugned site plan dated 05.03.1986, thereby showing himself to be in possession of much excessive area and also showing him as well as defendant no.3 to be the owners of excessive area. When earlier mutation no.1095 dated 25.06.1986 was in existence and was never cancelled and set aside or reviewed by any competent Court of law or authority, then no other mutation could have been again sanctioned after 32 years of passing of judgment and decree dated 06.03.1986. The shares of recorded co-owners have been illegally reduced and changed without orders of competent Court. The said judgment was not passed with regard to khasra no.209/2, whereas the said khasra is also included in mutation no.1839. Moreover, defendant no.12 was never owner in possession of any part of the land comprised in khasra no.209/2. Defendant no.1 became co-owner of 1/5th share, which had already been transferred in the name of his wife.

5. Learned counsel for the petitioner/defendant no.1 has argued that earlier suit was decreed and shares were transferred as per the site plan annexed with the plaint exclusively and possession of the parties was mentioned in the plaint itself. The portion shown in yellow colour was shown to be in possession of defendant no.1 and the judgment and decree dated 06.03.1986 was legally passed. Defendants no.1 to 4 and the plaintiff

were declared owners in possession of the disputed property as per the site plan annexed with the plaint and the said judgment and decree dated 06.03.1986 became final and was never challenged by anyone. However, defendant no.12 filed a Civil Suit for declaration for getting the said judgment and decree set aside. The said suit was got dismissed as withdrawn on 08.11.2021. Defendant no.12 never raised any construction over the disputed property. As per decree, plaintiff was given one shop, shown in blue colour and defendant no.1 became owner in possession of land measuring 21 marlas shown with yellow colour in the site plan. It is further argued that mutation no.1095 was wrongly entered and sanctioned by revenue officials as the same was not as per the decree. When this fact came to the knowledge of revenue Authorities, mutation no.1839 was sanctioned on 19.07.2018, as per Civil Court's decree dated 06.03.1986. Therefore, the order passed by the Appellate Court is liable to be set aside.

6. Learned counsel for Caveator – respondent no.1/plaintiff has submitted that after sanctioning of mutation no.1095 dated 25.06.1986, there was no occasion to enter into fresh mutation no.1839 dated 19.07.2018 i.e. after about 32 years, without issuance of notice to the effected parties. The site plan of Revenue Authorities should have been in conformity with the site plan prepared as per decree dated 06.03.1986. The site plan itself has been challenged by taking the plea of fraud and site plan annexed with the plaint of the suit, decreed on 06.03.1986, did not tally with the property at the spot, by the Revenue Authorities. Defendant no.1/petitioner claimed his 1/5th share at the time of executing transfer deed in favour of his wife. He could not alienate further more than his share. The suit property is required

to be preserved during the pendency of the case and the learned Trial Court has passed the order accordingly. So, the present revision petition deserves to be dismissed.

7. I have heard the submissions made by learned counsel for the parties.

8. The civil suit filed by plaintiffs against defendant no.12 was decreed on 06.03.1986 bearing *Civil Suit No.161 of 1986* titled as *Suresh Kumar and others vs. Fateh Chand*. Mutation no.1095 was sanctioned. As per contentions of the plaintiff, in the alleged family settlement, 1/5th share each was given to the plaintiff and defendants no.1 to 4 and the same was also incorporated in the revenue records. After 32 years, said mutation was cancelled and mutation no.1839 was sanctioned on 19.07.2018 without issuing notice to the affected parties and without any order passed by any competent Court of law. In the earlier suit, property was comprised in khasra nos.209/1 and 209/3. Khasra no.209/2 was not part of the said property.

9. The plea of the plaintiff in the case is that the site plan annexed with the plaint of *Civil Suit No.161 of 1986*, decreed on 06.03.1986, was obtained by fraud and the site plan prepared by the Authorities was not as per the spot. The same was wrongly furnished with the said case. So, question of fraud is required to be proved by way of evidence. Whether, after 32 years of sanctioning of mutation, the Revenue Authorities, without giving notice to the effected parties, can again sanction the mutation, all these are triable issues and the suit property is required to be preserved and further alienation or transfer of suit property in any manner would lead to

multiplicity of proceedings. In case Maharwal Khewaji Trust (Regd.), Faridkot vs. Baldev Dass reported as (2004) 8 Supreme Court Cases 488, it is held by Hon’ble Apex Court that unless and until a case of irreparable loss or damage is made out by a party to the suit, the Court should not permit that nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings.

10. Accordingly, I find that there is no illegality in the order passed by the learned Appellate Court. So, the present revision petition is without any merit and is hereby dismissed.

11. Pending applications, if any, shall stand disposed of along with this judgment.

July 24, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.