

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No. 3779 of 2022 (O&M)

Date of decision : 9.1.2023

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Kamlesh

.....Petitioner

vs.

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Rajnish K. Gupta, Advocate for the petitioner.

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H. S. Madaan, J.

1. Briefly stated, facts of the case are that, plaintiff – Kamlesh wife of Ramesh Chand had filed a suit against defendants State of Haryana and others, contending that she is owner in possession of land measuring 77 Kanal 16 Marla being 151/14352 share of total land measuring 7396 Kanal 19 Marla, situated at village Padha, Tehsil Ballah, District Karnal, having purchased the same from earlier owners Smt. Yashvanti w/o Krishan Kumar and Smt. Saroj w/o Satbir and she was delivered exclusive possession of the land measuring 72 Kanal 7 Marla by her vendors out of total land of 77 Kanal 16 Marla purchased by her and possession of rest of the land was delivered in the form of share. As a matter of fact vendors of the plaintiff had purchased the land from Kanwar Bhan @ Kanwal

Pal, Suresh Kumar and Dharampal son of Hari Ram, vide registered sale deed No. 94/1 dated 9.5.2006 and mutation was entered and sanctioned in their favour. Kanwar Bhan @ Kanwar Pal, Suresh Kumar and Dharampal were in exclusive possession of land measuring 74 Kanal 7 Marla and in rest of the land they were co-sharers and they had delivered the possession of the land to the plaintiff as per their possession in the Revenue record, however, the defendants in collusion with each other reduced the land in possession of vendors of the plaintiff from 74 Kanal 7 Marlas to 72 Kanal 7 Marlas in the jamabandi for the year 2014-2015. The vendors of the plaintiff also came in possession of the land of those numbers; that when the possession of the same land was delivered to the plaintiff by her vendors, the defendants again in collusion with each other reduced the land measuring 72 Kanal 7 Marla to 68 Kanal 8 Marla without order of any competent court or authority and have rather divided the land in different Khewats. When the plaintiff obtained a copy of the jamabandi for the year 2019-2020, she came to know about the fraud played by the defendants.

2. The defendants on getting notice, put in appearance and filed reply to the suit as well as injunction application, submitting that in Khewat No. 697 one Dharambir son of Zile Singh @ Zila had transferred his share in favour of his wife and sons in specific killa numbers vide Transfer deed No. 159/1 dated 9.6.2020 and on basis of that transfer, deed mutation No. 4491 dated 15.6.2020 was entered and sanctioned and Khewat was bifurcated as one co-sharer

had transferred his land. The plaintiff had purchased land measuring 77 Kanal 15 Marla out of total land measuring 7396 Kanal 19 Marlas from the previous owners. The total land measuring 7396 Kanal 19 Marla is joint land comprising of 'Chahi' and Gair Mumkin land. The defendants denied that they have divided the suit land in two parts and caused wrongful loss to the plaintiff and wrongful gain to the other owners.

3. After hearing the arguments, the trial Court of Civil Judge (Junior Division) Assandh, vide order dated 1.3.2021 accepted the application for grant of ad interim injunction, restraining the defendants from executing any sale deed of land comprised in Khewat No. 741 min.

4. The plaintiff had filed an application under Order 39 Rules 1 and 2 CPC qua defendants No. 4 to 6, who had been impleaded later on, on an application having been filed by them. That application was disposed of vide order dated 12.11.2021, observing that no relief had been claimed against defendants No. 4 to 6. Vide that order it was further observed that order dated 1.3.2021 passed by the Court was still subsisting as there was no change in circumstances qua defendants No. 1 to 3.

5. Defendants No. 4 to 6 had filed an appeal before District Judge, Karnala, which was assigned to Additional District Judge, Karnal, who vide order dated 1.12.2021, allowed the same partly, in as much as, portion of the impugned order dated 1.3.2021 and 12.11.2021, which had the effect of restraining defendants No. 4 to

6 from alienating their share in the Khewat and executing and getting registered sale deeds with respect thereto, was set aside and it was clarified that defendants No. 4 to 6 shall be at liberty to alienate their share in the Khewat at per law.

6. The plaintiff, feeling aggrieved, has approached this Court by way of filing the present revision petition.

7. I have heard learned counsel for the revision petitioner -plaintiff, besides going through the record and I find that the revision petition lacks merit. The suit for grant of permanent injunction was originally filled by the plaintiff Kamlesh against the State of Haryana, as well as its Officers, without impleading the other co-sharers. The application for grant of ad interim injunction filed by the plaintiff against defendants No. 1 to 3 had been disposed of, in as much as, defendants were restrained from executing any sale deed of land comprised in Khewat No. 741 min. Subsequently, three of the co-sharers in the suit property had approached the trial Court for being impleaded as defendants. Their application was accepted and they were impleaded as defendants No. 4 to 6. The trial Court had decided the application for ad interim injunction afresh observing that no relief can be claimed against defendants No. 4 to 6. Learned Additional District Judge, Karnal, on an appeal having been filed, had accepted the same partly, modifying the impugned orders, which had effect of restraining the defendants No. 4 to 6 from alienating their share in the Khewat and executing and getting registered sale deeds with respect thereof, was set aside, clarifying that the

defendants No. 4 to 6 shall be at liberty to alienate their share in the Khewat as per law.

8. No fault can be found with such order passed by learned Additional District Judge, Karnal. The plaintiff could not possibly restrain defendants No. 4 to 6 to make alienation from the joint land to the extent of their share and only this relief has been granted to defendants No. 4 to 6 by learned Additional District Judge, Karnal, vide impugned order. The application under Order 7 Rule 7 CPC filed by the revision petitioner – plaintiff for moulding the relief of protecting the possession over her share of land, cannot be allowed under such circumstances.

9. The revision petition is found to be without any merit and the same stands dismissed accordingly.

9.1.2023
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No