

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

**CR No.5490 of 2022
Date of Decision: 09.01.2023**

Smt. Gajna and others

...Petitioners

Versus

Bittu and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present :- Mr. Suman Jain, Advocate
for the petitioners.

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MEENAKSHI I. MEHTA, J.

By way of the instant revision petition, the petitioners-plaintiffs (here-in-after to be referred as 'the plaintiffs') have laid challenge to the judgment dated 31.10.2022 (Annexure P-10) handed down by learned Additional District Judge, Palwal (for short 'the Appellate Court'), whereby the appeal preferred by respondents No.1 to 6-defendants (here-in-after to be referred as 'the defendants') to assail the order dated 03.10.2022 (Annexure P-8) passed by learned Civil Judge (Junior Division), Hodal (for short 'the trial Court'), in Civil Suit No.670 of 2022 titled as '*Gajna and Others vs. Bittu and Others*', has been allowed and the application moved by them (plaintiffs) under Order 39 Rules 1 & 2 read with Section 151 CPC, has been dismissed.

2. As per the brief factual-matrix leading to the filing of the present revision petition, the plaintiffs have filed the said Civil Suit against

the defendants and proforma respondent No.7 for seeking a decree for the declaration to the effect that they (plaintiffs) are the owners in possession of the suit land and they have further prayed for the relief of permanent injunction to restrain the defendants from interfering in their peaceful possession over the same, while averring that they have inherited this land from their father named Bihari Lal (since deceased). On the self-same facts, they (plaintiffs) moved the afore-mentioned application for seeking *ad-interim* injunction which was allowed by the trial Court vide the order Annexure P-8. Then, the defendants preferred an appeal against the said order and the same has been allowed by the Appellate Court vide the impugned judgment (Annexure P-10).

3. I have heard learned counsel for the petitioners-plaintiffs in this revision petition, at the preliminary stage and have also gone through the file carefully.

4. Learned counsel for the plaintiffs contends that said Bihari Lal, the father of the plaintiffs, was in possession over the suit land as the '*Gair Marusi*' tenant as shown in the copy of '*Jamabandi*' Annexure P-1 and after his death, the plaintiffs came in possession over the said land, by way of the natural flow of inheritance but the defendants, who are their (plaintiffs') collaterals, are interfering in their possession over this land with intention to oust them from the same forcibly and illegally and the trial Court had rightly considered these facts and had allowed the above-said application vide order Annexure P-8 but however, vide the impugned judgment, the Appellate Court has wrongly allowed the appeal preferred by

the defendants against the afore-referred order and has dismissed the said application and therefore, the impugned judgment is not legally sustainable and hence, it deserves to be set-aside. To buttress his contentions, he places reliance upon the observations made by the Apex Court in **Rame Gowda (D) by Lrs. Versus Mr. Varadappa Naidu (D) by Lrs. and Anr, 2004(1) SCC 769.**

5. However, the above-raised contentions are devoid of any merit because for seeking the relief of injunction, the plaintiffs have to *prima-facie* establish the factum of their possession over the suit land. Though, they claim to have come into the possession over this land after the death of their father who was recorded to be ‘Gair Marusi’ tenant in the same but the fact remains that at this stage, they have not come forward with any fair and candid version as to how and when they got possession of the said land nor they have placed any cogent material or the relevant revenue record on the file for this purpose.

6. The observations, as made by the Apex Court in **Rame Gowda (D) by Lrs. (supra)**, are of no avail to the plaintiffs because in the afore-said case, it was observed that “*the injunction against the true owner and in favour of the trespasser in settled possession could be granted, if the true owner wanted to dispossess such trespasser by use of excessive force though he might take possession peacefully if possible*” whereas, in the present case, as discussed earlier, the plaintiffs have not been able to show their possession over the suit land.

7. In view of the fore-going discussion, this Court is of the

considered opinion that the impugned judgment (Annexure P-10) does not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the revision petition in hand, being *sans* any merit, stands dismissed.

8. However, it is clarified that nothing contained here-in-before shall be construed to be an expression of the opinion of this Court on the merits of the Civil Suit pending between the parties in the trial Court.

09.01.2023
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*