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

**CR-7741-2023 (O&M)
Date of Decision: 20.12.2023**

**RAM KISHAN THROUGH LRS AND ANR
.....PETITIONERS**

VS

**SADHU RAM
..... RESPONDENT/DEFENDANT**

CORAM: HON’BLE MR. JUSTICE GURBIR SINGH

Present: Mr. R.S.Budhwar, Advocate for the petitioners.

GURBIR SINGH, J. (ORAL)

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CM-23368-CII-2023

This application is filed under Order 22 Rule 3 CPC for permission to implead LR’s of Ram Kishan s/o Shankar (petitioner No.1)

In view of the averments made in the application, the same is allowed and legal representatives of Ram Kishan s/o Shankar (petitioner No.1) are ordered to be impleaded through him, subject to just exceptions, if any.

Amended Memo of parties is taken on record.

Registry is directed to tag the same at the appropriate place.

CM stands disposed of.

Main case

1. Challenge in this revision petition is for setting aside the impugned order dated 15.07.2023 (Annexure P-8) passed by the learned Addl. District Judge, Jind vide which the appeal filed by the petitioners against the order dated 09.09.2021 (Annexure P-6) passed by the learned Civil Judge (Jr. Divn) Narwana has been dismissed.

2. The brief facts as culled out from the petition are that the petitioners filed a suit for declaration to the effect that (i) order dated 27.05.2014 sanctioning of “Naksha Be” (ii) “Naksha Be” dated 22.04.2014 (iii) “Naksha Zim” dated 27.06.2014 (iv) order dated 03.07.2014 issuing ‘Sanad Taksim’ (v) ‘Sanad Taksim’ dated 03.07.2014 passed by Assistant Collector Iind Grade, Narwana (Yehsilardar, Narwana) and ‘Kabja Karyawahi’ dated 25.04.2015 (vii) Mutation No.6646 dated 08.04.2013 and subsequent revenue record on the basis of which partition orders passed, are illegal, null and void.

3. That the case of the petitioners/plaintiffs is that it was pleaded that Sadhu Ram was adopted by Ramji Lal and after adoption, he has severed all his relations with his biological family and remained with adopted parents. But inadvertently, share of Smt. Bhagwani, biological mother, was entered in the name of Sadhu Ram. Thereafter family settlement took place in the year 2001 and then, a release deed No. 370 dated 28.06.2001 was executed while transferring 51 kanals of land in favour of remaining three brothers i.e. Dalipa etc. Later on, civil suit was filed by Sadhu Ram and land was equally partitioned among the co-sharers and equal land of 110 kanal 06/05 marla each was given. All the four brothers were shown owners of 110 kanal 06/05 marla but respondent/defendant got mutated some share in his name vide mutation

No.6646 and without informing the petitioners/plaintiffs.

4. The respondent/defendant- filed three applications for partition of land without any service of summons on the petitioners-plaintiffs and got conducted the partition proceedings in collusion with the revenue officials. Kabja karyawahi was conducted on 25.04.2015.

5. The learned trial Court dismissed the application for grant of interim injunction. Appeal against said order was also dismissed.

6. The learned counsel for the petitioners has argued that in the jamabandi for the year 2011-2012, all the four brothers are shown owners of 110 kanals 06/05 marla land and thereafter partitioned proceedings were conducted in the absence of the petitioners-plaintiffs and the land was ordered to be partitioned. The petitioners were not having any knowledge of the pendency of the said partition proceedings. Summons were not issued but it has been wrongly pleaded that petitioners/plaintiffs were served through Munadi. The prescribed mode of service of summons as mentioned under Section 20 of the Punjab Land Revenue Act, is not followed.

7. The petitioner is still in possession of the property. The lodging of FIR by the respondent-defendant itself shows that petitioners/plaintiffs are in possession of the suit land. Therefore, the Court below failed to take the note of the same and has wrongly dismissed the application for grant of temporary injunction.

8. I have heard the submissions of learned counsel for the petitioners.

7. The learned Appellate Court has passed the detailed order. The extract of the said order is as under:-

“ 13. *Facts not disputed and necessary for deciding the present*

appeal are that one Shankar was having four sons namely Dalipa, Ram Kishan (plaintiff no.1), Ram Sarup and Sadhu Ram (defendant). Sadhu Ram was adopted by Ramji Lal son of Ram Rikh, who is also from the family/clan of Shankar. Vide judgment and decree dated 03.03.1975 passed in civil suit No.13 of 1965 land owned by Ramji Lal was transferred in favour of Sadhu Ram. Defendant Sadhu Ram was also owner of 51 kanals land i.e. 1020/8903 share of total area measuring 445 kanals 3 marlas out of which he received 14 kanals of land by way of inheritance after death of her biological mother vide mutation No.4980 dated 31.12.1995. Since defendant Sadhu Ram was adopted by Ramji Lal his relations with his biological family were severed and therefore he was not entitled to inherit any land after death of her biological mother. Thereafter, Sadhu Ram defendant executed released deed bearing No.370 dated 28.06.2001 in favour of Dalipa etc. Later on Sadhu Ram defendant came to know that release deed bearing No.370 dated 28.06.2001 was got executed qua 51 kanals of land instead of 14 kanals of land which he intended to transfer in favour of Dalipa etc by him from her biological mother. Thereafter, Sadhu Ram defendant filed civil suit No. 193 dated 24.05.2002 in which he challenged release deed No.370 dated 28.06.2001 qua 37 kanals of land out of 51 kanals of land. Said suit was decreed vide judgment and decree dated 27.8.2007 and release deed bearing No.370 dated 28.06.2001 and mutation No.5367 which was sanctioned on the basis of released deed was declared as null and void to the extent of 37 kanals of land. On the basis of judgment and decree dated 27.08.2007 mutation No.6646 was sanctioned and 247/2153 share i.e. 12 kanals 7 marlas was transferred in favour of defendant. Thereafter, defendant Sadhu Ram filed application for partition of 110 kanals 05 marlas of land before ACIInd Grade, Narwana which was allowed and 12 kanals 7 marlas bearing rect. No.331//2/1/2(4-1), 3/1/1(2- 2), Rect. No.249//15/1(0-8),16/3(3-14),25/1(2-2) was allotted to the defendant Sadhu Ram.

14. In the present suit plaintiffs have challenged mutation No.6646 and partition proceedings. However, mutation No.6646 was sanctioned on the basis of judgment and decree dated 27.08.2007 which has become final between the parties and therefore at this stage there is nothing on the record from which it could be inferred that mutation No.6646 was wrongly sanctioned.

15. As far as partition proceedings are concerned it is alleged by the plaintiffs that defendant Sadhu Ram was having no right to seek the partition, secondly that no notice was issued to them regarding partition proceedings and thirdly that no possession of 12 kanals 7 marlas was given to defendant Sadhu Ram at the spot. However, from judgment and decree dated 27.08.2007 and mutation No.6646 it is

evident that defendant Sadhu Ram was co-sharer to the extent of 247/2205 share i.e. 12 kanals 7 marlas of land in total land measuring 110 kanals 05 marlas which as per jamabandi for the year 2011-12 was recorded in favour of plaintiffs/their predecessors-in-interest and therefore defendant Sadhu Ram has every right to seek the partition of land measuring 110 kanals 05 marlas. Further as per record of partition proceedings. Plaintiffs were served through munadi and therefore, at this stage it cannot be held that no notice of partition proceedings were given to plaintiffs or their predecessors. Further it is also evident from the record that after passing of order of partition Sanad Taksim (mode of partition) was prepared/sanctioned. Defendant Sadhu Ram has placed on file copy of Kabza Karwahi, perusal of which shows that possession of 12 kanals 7 marlas of land was given to defendant Sadhu Ram as per Sanad Taksim in the presence of four persons including Preet Singh, Lamberdar and Rajpal, Chowkidar. Thus at this stage except bare averments in the plaint there is nothing on the file which prima facie proves that plaintiffs are still in possession of land in dispute measuring 12 kanals 7 marlas and that defendant Sadhu Ram is not owner in possession of 12 kanals 7 marlas of land.

16. Further even it is presumed for the sake of arguments that plaintiffs are still in possession of entire 107 kanals 3 marlas of land including 12 kanals 7 marlas of land which was allotted to defendant Sadhu Ram in the partition even then no case is made out in favour of plaintiffs for grant of ad-interim injunction as prayed for firstly for the reason that plaintiffs prima facie fails to prove that partition proceedings were illegal, null and void and therefore defendant Sadhu Ram has every right to take possession of 12 kanals 7 marlas of land which came to his share in the partition proceedings and secondly plaintiffs have not alleged any overt act on the part of defendant which create apprehension in their mind that they would be dispossessed from 12 kanals 7 marlas of land forcibly by the defendant.

17. Therefore, in view of above discussion no prima facie case is made out in favour of plaintiffs, balance of convenience is in favour of defendant and no irreparable loss shall be caused to the plaintiffs, if ad- interim injunction is not granted in their favour.”

8. Petitioners/plaintiffs are entitled for injunction only if petitioners/plaintiffs prime facie proves possession over the suit property. The petitioners/plaintiffs are seeking injunction on the basis of entries made in the jamabandi for the year 2011-2012 but thereafter partition proceedings have

been finalized, sanad taksim was issued on 03.07.2014 and kabja karyawahi was conducted on 25.04.2015. It means that joint land stood partitioned and severance of status took place on 25.04.2015. Petitioners/plaintiffs have not produced the latest jamabandi. So prima facie, it cannot be said that the petitioners-plaintiffs are in possession of the suit property. The judgment decree dated 27.08.2007 has become final between the parties and mutation No.6646 was sanctioned long time back on the basis of said judgment and decree. Petitioners-plaintiffs have challenged the said mututation. The learned Appellate Court has rightly held that it could not be inferred that said mutation has wrongly been sanctioned. Whether petitioners/plaintiffs were not having knowledge of partition proceedings is to be proved by leading evidence. At this stage, it cannot be prima facie accepted. Well reasoned findings have been given by the Court below and no ground for interference is made out.

9. Petition stands dismissed accordingly.

20.12.2023
renu

(GURBIR SINGH)
JUDGE

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