

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

134

CR-1245-2024 (O&M)
Date of decision:20.03.2024

Birmati

... Petitioner

Vs.

Deepak & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. M.S. Chahal, Advocate for the petitioner.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed against the order dated 26.07.2021 (Annexure P-1) passed by the Additional Civil Judge (Sr. Division), Loharu, vide which the application filed by the plaintiff/respondents No.1 to 4 under Order 39 Rule 1 & 2 CPC read with Section 151 CPC has been allowed and further for setting aside of the order dated 02.02.2023 (Annexure P-3) passed by the Additional District Judge, Bhiwani, vide which the appeal of the petitioner has been dismissed.

2. The brief facts material for adjudication of the present revision petition are that the plaintiffs/respondents filed a suit for declaration to the effect that the plaintiffs are the owners in possession of 229/51450 share each in khewat No.195, katas 6, total land measuring 85 bighas and 15 biswas and 48/19190 share each in khewat No.196, katas 8, total land measuring 100 bighas, 19 biswas situated in the revenue estate of Singhani, Tehsil Loharu, District Bhiwani as per jamabandi for the year 2013-14, being coparceners of joint Hindu family/coparcenary property which is in the name of defendant No.2 being the *karta* of coparceners. Sale deed

No.1566 dated 09.01.2020 executed by defendant No.2 and registered in favour of defendant No.1 and consequent mutation No.3281 were also challenged being wrong, null and void and without legal necessity and without consideration and not for the benefit of estate and in the alternative the plaintiffs are entitled to get the land under Section 22 of the Hindu Succession Act, 1956 with possession and relief for permanent injunction was also sought for restraining defendant No.1 from alienating the land further and not to dispossess the plaintiffs and to raise any kind of construction over the suit land and for restraining defendant No.2 from alienating the remaining land to defendant No.5 or any other person and for restraining defendant No.4 from disbursing the amount of cheque bearing Nos.796244 and 796245 dated 09.01.2020 allegedly deposited by defendant No.2 in his account maintained with defendant No.4 – Bank to defendant No.2 on the basis of all kinds of evidence, both oral as well as documentary. The plaintiff/respondent No.1 also filed an application under Order 39 Rule 1 and 2 CPC read with Section 151 CPC before the trial Court. The trial Court allowed the said application vide the impugned order dated 26.07.2021 and restrained the petitioner from alienating the suit land in favour of any other person till disposal of the suit and further directed to maintain the status quo qua possession as well as construction regarding the suit land till the disposal of the suit. Against the said order, the petitioner preferred an appeal before the Appellate Court which was dismissed vide order dated 02.02.2023 while upholding the order dated 26.07.2021 passed by the trial Court. Aggrieved against the said orders, the revision petitioner has knocked the doors of this Court by way of filing of the present revision

petition.

4. Learned counsel for the petitioner/defendant has contended that both the impugned orders are illegal and are against law and the true facts of the case. Both the Courts below did not consider while adjudicating the matter that the petitioner is a bonafide purchaser and by restraining him, great injustice and irreparable loss has been caused to the petitioner. He has further contended that it has been erroneously held by the trial Court that the plaintiffs have produced on record copy of mutation No.2988, perusal of which shows that the land comprised in khewat Nos.195 and 196 was inherited by defendant No.2 along with his other siblings after death of their father, namely, Duli Chand by way of natural inheritance, which prima facie indicates that suit land is ancestral and coparcenary property in the hands of defendant No.2 vis-a-vis plaintiffs No.1 to 3. The ancestral nature of suit property has not been proved. He has argued that it was the duty of plaintiff No.4 – Mamta to get the entry of the order of the Court incorporated in the revenue record at proper time, in order to avoid the multiplicity of the litigation and has vehemently contended that the present petitioner is a bonafide purchaser with consideration, without notice of the abovesaid order. Prior to the purchase, with due caution the petitioner had gone through the entire revenue record pertaining to the property in question, but no adverse entry was found in the record. He has submitted that after purchasing the land, the petitioner has spent a huge amount for betterment of land in dispute by levelling the land, raising construction of shops and boundary wall. The plaintiffs have filed the present suit in collusion with defendant No.2/respondent No.5 in order to achieve their ulterior motive and

to illegally extract money from the petitioner. The petitioner has already raised construction of shops upto the roof level and only the plastering of walls, fixing of wooden doors and flooring is to be done but all these facts have not been considered by the Courts below and has contended that the impugned orders are liable to be set aside.

5. I have heard learned counsel for the petitioner at length and have perused the records thoroughly.

6. This fact is not disputed that the impugned sale deed dated 09.01.2020 had been executed by Suresh/defendant No.2 in favour of defendant No.1 - Birmati. As per the plaintiffs, plaintiffs and defendant No.2 constituted a joint hindu family and defendant No.2 is *karta* of the family and alienation made was without legal necessity or consent of the other coparceners. As per petitioner/defendant No.1, the entire sale consideration was paid and possession of the purchased property was taken which is a small part of big chunk of land of the plaintiffs and defendant No.2 and its construction is underway.

7. Sale of suit land by defendant No.2 in favour of defendant No.1 is of specific share i.e. 10/2019 share of the total land. As per mutation No.2988, suit land was inherited by defendant No.2 along with others from a common ancestor. As per jamabandi for the year 2013-14, the land is joint holding of co-sharers.

8. Again this fact is not disputed that as per order dated 07.09.2016 passed by the trial Court in petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 titled as Mamta Vs. Suresh, defendant No.2 – Suresh has been restrained from alienating the

suit land in favour of any other person. But defendant No.2 had sold the suit land to defendant No.1 and also entered into another agreement to sell with defendant No.5 for selling the remaining land. So, the trial Court has rightly held that prima facie a case is made out in favour of the plaintiffs and the balance of convenience is also in their favour and in case the injunction is not granted, then they are likely to suffer the irreparable loss.

9. In the light of the above, the impugned order does not suffer from any illegality or perversity and does not call for any interference.
10. The revision petition sans merits stands dismissed.
11. Pending applications, if any, also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

20.03.2024
harjeet

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