

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

312 CR-1507-2024 (O&M)
Date of decision: 30.04.2024

Sher Singh and others ...Petitioners

Versus

Inderjit Kaur and others ...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Amit Jain, Sr. Advocate with
Mr. Chetan Slathia, Advocate for the petitioners.

Mr. Avnish Mittal, Advocate for respondent No.1.

Mr. Anurag Chopra, Advocate for respondent Nos.2 to 9.

VIKAS SURI, J.

1. Challenge in the present revision petition is to the order dated 16.01.2024 (Annexure P-12), passed by the learned Civil Judge (Jr. Divn.), Kharar, whereby grant of *ex parte ad interim* injunction was not considered as the Court deemed it appropriate to hear the opposite party.
2. On 11.03.2024, the following order was passed:-

“Learned Senior counsel for the petitioners has *inter alia* contended that this case has a long drawn past. The claim to the land in question is through the predecessor-in-interest, who had inherited the same from his father Atru. In nutshell, Rachan Singh and his two sons namely Sher Singh and Sarja Singh had inherited immovable property from the father of Rachan Singh.

In an *inter se* litigation between Sarja Singh and Sher Singh in a suit for declaration that he is owner to the extent of $1/3^{\text{rd}}$ share of the land specified in the headnote situated in village Jhampur or in alternate he be declared owner to the extent of 1483/2409 share of the same land along with the share of the tubewells and $1/3^{\text{rd}}$ share of the houses and plots and $1/3^{\text{rd}}$ share of the land described in the headnote situated in village Thaska and sole owner in possession of the land mentioned in the headnote situated in village Teera (*see* Annexure P-1 at Pg.29) alongwith share of the tubewell and of 31/54 share of the land described in the headnote situated in village Jhampur and in the alternate is owner upto the extent of $2/3$ share and in joint possession of the same land with consequential relief of permanent injunction. The said suit was dismissed. Thereupon, on an appeal having been preferred, the first appellate Court decreed the suit that plaintiff is owner to the extent of $1/3^{\text{rd}}$ share, after holding that the suit property was coparcenary property, being ancestral in nature qua the plaintiff in the hands of Rachan Singh. However, in the decree dated 11.06.1990, passed by the first appellate Court, while recording the details of the suit property, the land described in the prayer clause as alternate relief was wrongly incorporated, which included the land situated in village Teera.

The second appeal preferred to this Court there against was dismissed vide judgment dated 08.04.2010 and the SLP there against has also been dismissed. On account of a material typographical error in the decree passed by the appellate Court, an application was moved before this Court seeking correction of the same. Vide order dated 28.08.2015, this Court *prima facie* held that as the error had occurred in the decree passed by first appellate Court and keeping in view the findings recorded in paragraphs 9 and 11 of the judgment passed by first appellate Court, the clerical mistake could be rectified by the said Court. Thereafter, vide order dated 01.09.2023 aforementioned mistake was rectified by the first appellate Court.

It is further submitted that in the meanwhile, vide sale deed dated 05.01.2024 (Annexure P-9) Inderjit Kaur daughter of Sarja Singh has sold the entire land situated in village Teera to different persons i.e. respondents No.2 to 9 herein. The petitioner-plaintiffs were constrained to file a suit for declaration to the effect that the plaintiffs are co-owners in joint possession the land mentioned in the headnote of the plaint (Annexure P-10) situated in Village Teera, while challenging the sale deed dated 05.01.2024. Along with the said suit an application seeking *ad interim* injunction under Order 39 Rule 1 and 2 CPC has also been filed. Vide order dated 16.01.2024, the learned trial Court while issuing notice of the said suit as well as the of stay application to the defendants observed to hear the defendants before grant of *ad interim* injunction.

Aggrieved by the aforesaid, the petitioners have filed the present revision petition.

Learned counsel for the petitioner submits that respondent No.1 could not pass a better title than what she possesses and now construction is being raised thereon at a very fast pace i.e. over the suit land that was sold vide the impugned sale deed. He refers to the photographs placed on record as Annexure P-13. It is also brought to notice that the trial Court had issued notice, returnable for 01.02.2024. Learned Senior Counsel would refer to the *zimni* orders passed by the trial Court after 16.01.2024, which have been reproduced in para 26 of the petition. The vendor of the sale deed has been served and has put in appearance through counsel, whereas the summons issued to defendant Nos.2 to 5 were not received back. Summons issued to defendant No.6 remain unserved, whereas summons issued to defendant No.7 were received back with the report of 'wrong address'. Summons issued to defendant No.8 were received back with the report 'no such person on given address' and summons issued to respondent No.9 were received back with the report 'left the address'. The aforesaid defendants correspond to the serial number of the respondents in the present revision

petition. Learned Senior Counsel further submits that the addresses of respondent-defendants are those which have been recorded in the impugned sale deed and as such, are the only known addresses of the said persons, while respondent No.1 is already represented by counsel before the trial Court.

It is also brought to notice that the decree dated 11.06.1990 was modified vide order dated 01.09.2023 and the impugned sale deed has been effected on 05.01.2024, whereby said Inderjit Kaur has sold the entire land in village Teera, including the share of the petitioner-plaintiffs in spite of the decree dated 09.04.2019 for permanent injunction restraining respondent no.1 having been passed in favour of petitioners, which was also got recorded in the revenue record vide Rapat No.406.

Notice of motion, returnable for 16.04.2024.

Notice *re*: stay as well.

Liberty is granted to additionally serve respondent No.1 through the counsel representing her before the trial Court.

Process *dasti*.

In the meanwhile, the nature of the suit land be not changed, including by way of construction and there shall also be stay on alienation or creating any third party interest in the said land, till the next date of hearing.”

3. On resumed hearing today, Mr. Avnish Mittal, Advocate, puts in appearance on behalf of respondent No.1 and has filed his power of attorney in the Court, which is taken on record. Mr. Anurag Chopra, Advocate appears on behalf of respondent Nos.2 to 9 and submits that he has already filed his power of attorney on behalf of respondent Nos. 2 to 4 and 6 to 9 in the registry; and has filed his memo of appearance on behalf of respondent No.5 in the Court, which is taken on record.

4. At the very outset, learned counsel for the respondents submit that the application under Order 39 Rules 1 and 2 CPC is pending

consideration before the trial Court and is at the initial stage, wherein the respondents have put in appearance before the Court below and are in the process of completing pleadings. The service in the suit is complete, as such. In the light of the same, they pray that the present petition be disposed of relegating the parties to contest the matter before the trial Court and in the meanwhile, the interim order dated 11.03.2024 passed by this Court be continued till the decision of the aforesaid stay application.

5. Learned counsel for the petitioners concedes to the aforesaid submissions made in all fairness. It is, however, pointed out that as per service report, the addresses of the defendants have reportedly changed and they be called upon to furnish their correct/current address before the trial Court as per the requirement in terms of Order 6 Rule 14A(2) CPC.

6. Heard learned counsel for the parties.

7. In view of the consensus arrived at between the parties, as noticed above, the present revision petition is disposed with a direction to the trial Court that on completion of pleadings and after considering the rival contentions that may be urged before it, proceed to dispose of the application under Order 39 Rules 1 and 2 CPC, in accordance with law. Till the decision of the aforesaid application, the *ad interim* stay granted by this Court vide order dated 11.03.2024 shall continue.

8. Respondent Nos.2 to 9 are directed to verify their respective address given in the plaint and in case of any discrepancy therein, to take necessary steps to lodge their new addresses, as per law, failing which

they are liable for the consequences in terms of Order 6 Rule 14A(5) CPC.

9. The revision petition is disposed of in the aforesaid terms.

April 30, 2024
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No

Whether Reportable : Yes / No