

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3039-2022 (O&M)

Date of Decision: February 15, 2024

Sukhdev Singh and another

...Petitioners

Versus

Jagrop Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Atul Jain, Advocate
for the petitioners.

Mr.Prateek Pandit, Advocate
for respondents No.1 to 3.

Mr.Barjinder Singh, Advocate
for respondent No.4.

ARCHANA PURI, J.

The present revision petition has been filed by the petitioners-defendants No.2 and 3, to assail the affirmatory orders dated 06.04.2022 and 15.07.2022 passed by learned Courts below, whereby, an application under Order 39 Rule 1 and 2 CPC, filed by respondents No.1 to 3-plaintiffs, was allowed, at first instance and the said order stood affirmed by learned lower Appellate Court.

For the convenience of discussion, the parties are referred to as making appearance before learned Court below.

The facts germane, to be noticed, are as follows:-

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That, initially, plaintiffs had filed a suit for issuance of permanent injunction to restrain the defendants from interfering into peaceful possession of the plaintiffs, taking forcible possession of land measuring 15 Kanal 15 Marla, comprised in Khewat/Khata No.1821/1830, Khatoni No.2609, Khasra No.1504/7-19, 1517/7-16, situated in revenue estate of village Kapurthala Sharki, Tehsil and District Kapurthala, as per jamabandi for the year 2015-16.

Plaintiff No.1-Jagroop Singh is son of plaintiff No.2-Sukhwinder Singh. The land was originally owned by Balvir Singh and defendant No.1-Dalbir Kaur. Said Balvir Singh is father of defendant No.1-Sukhdev Singh. Said Balvir Singh and Dalbir Kaur, vide agreement dated 09.06.2020 had agreed to sell land measuring 7 Kanal 16 Marla, falling in Khasra No.1517/7-16 to plaintiff No.1-Jagroop Singh, for a sale consideration of Rs.7 lakh per acre and they received entire sale consideration and since then, plaintiff No.1 is in peaceful cultivating possession of the above-said land. Likewise, Balvir Singh and defendant No.2 Dalbir Kaur had also sold their land 7 Kanal 19 Marla, falling in Khasra No.1504/7-19, for a sale consideration of Rs.8 lakh per acre to the plaintiffs No.2 and 3, i.e. Sukhwinder Singh and Harjinder Singh, vide agreement dated 09.06.2020 and received the consideration and delivered the physical possession to them and since then, the plaintiffs are in physical possession of the suit property. However, said Balvir Singh had died, leaving behind defendant No.1, being his legal heir.

On 07.01.2021, defendant No.2-Dalbir Kaur had again executed an

agreement dated 07.01.2021, in favour of plaintiff No.1, vide which, she admitted about receipt of sale consideration, delivery of possession and possession of the plaintiffs. Thereafter, it was asserted about the defendants extending threat to interfere into the physical possession of the plaintiffs over the suit land.

In pursuance of the notice issued, the defendants made appearance and filed written statement, besides, reply to the application under Order 39 Rule 1 and 2 CPC. The defendants resisted the claim for the grant of injunction. In fact, besides taking various other objections, with regard to the maintainability of the suit, locus standi, estoppel etc., also they alleged that the agreements to sell, propounded by the plaintiffs, are false, forged and fabricated documents, which were never executed by Balvir Singh (since deceased) or defendant No.2, nor any payment under the said agreements was made. Otherwise also, the plaintiffs are not entitled to claim any relief, as the land is *nazool* land, which cannot be parted with possession, by way of agreement to sell, sale deed, gift deed or any other manner. The same will only go by way of inheritance. The said land was owned and possessed by Balvir Singh, who died on 22.09.2021 and during his lifetime, he had executed valid and legal Will dated 06.09.2021, in favor of defendants No.1 and 3, being his son and grandson.

After hearing learned counsel for the parties, learned Court below had allowed the application under Order 39 Rule 1 and 2 CPC and had restrained the defendants from interfering and taking forcible possession of the suit land, except in due course of law.

Feeling aggrieved and dissatisfied with the aforesaid order, the defendants filed an appeal, which was also dismissed by learned lower Appellate Court vide judgment dated 15.07.2022. Not satisfied further, the petitioners, who are defendants No.1 to 3, before learned Court below, filed the present revision petition.

Learned counsel for the parties heard.

Perusal of the jambandi for the year 2015-16, reflects the name of Balvir Singh and Dalbir Kaur, in column of ownership, which is to the extent of 1/4th share each, vis-a-vis, land measuring 71 Kanal 14 marla. Also, two agreements to sell, relied upon by the plaintiffs, show Balbir Singh and Dalbir Kaur, alleged to have sold the land falling in Khasra No.1517/7-16 and 1504/7-19. The copies of the said agreements are Annexures P-7 and P-8. Also, these agreements relied upon by the plaintiffs reveal that Balvir Singh and Dalbir Kaur had agreed to sell the land to the plaintiffs for consideration amount of Rs.7 lakh and Rs.8 lakh per acre, respectively and possession had also been handed over to Jagroop Singh, Sukhwinder Singh and Harjinder Singh, in the respective agreements.

Undisputedly, the agreements to sell in question are not registered. Also, it is evident from the recitals in the jamabandi that the same is *nazool* land.

In the light of the same, learned counsel for the petitioners has assiduously submitted that since the agreements to sell are unregistered document, the Court below committed grave error in granting relief to the plaintiffs. Moreover, the land is nazool land. Thus, when on the basis

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thereof, substantive relief for specific performance of this agreement could not be given to the plaintiffs, therefore, the relief, ought not to be given to the plaintiffs, during the pendency of the suit. While making this submission, it is prayed that revision petition be accepted and the impugned orders be set aside and the application under Order 39 Rule 1 and 2 CPC be also dismissed.

On the other hand, learned counsel for the respondents has vehemently opposed the aforesaid submissions. It is assiduously submitted that as per the provisions of law, an unregistered document, can be looked into to collateral purposes and learned Court below had rightly considered the agreements to sell and rights of the parties, being jeopardized, on the basis of these agreements in question. As such, he made prayer for dismissal of the revision petition.

Admittedly, the agreements in question are unregistered documents, and therefore, shall not be admissible in evidence, as it is. This question will be appraised, at the time of final adjudication of the suit. However, at the stage of grant of interim injunction, these agreements cannot be overlooked, as the same can be looked into for the collateral purposes, like the nature of possession.

In this regard, suffice to make mention that the agreements to sell contain the recitals of parting of the possession to the plaintiffs. Even, agreement had subsequently been executed by defendant No.2-Dalbir Kaur on 07.01.2021, whereby, she had admitted about parting the possession and receipt of consideration as well as possession of the plaintiffs.

During the course of arguments, learned counsel for the petitioners has relied upon the judgment passed by the Hon'ble Supreme Court in *Civil Appeal No.6733 of 2022, titled as 'Balram Singh vs. Kelo Devi', decided on 23.09.2022*, to assert about no relief to be granted, on the basis of these agreements to sell. However, without dilating further, it should be noted that there is fine distinction made, with regard to the case under consideration, in the aforesaid case law and of the case in hand. Therein, the controversy was considered, at the stage, when the case was finally disposed of by the Court below and the High Court and in this context, it was observed, on the basis of unregistered document, the plaintiff will not be entitled to relief of permanent injunction, when he did not seek substantive relief of specific performance and the plaintiff cannot get relief by clever drafting. But however, in the case in hand, it is the question of grant of interim injunction, during the pendency of the suit. That being so, as such, no sustenance, can be drawn from the aforesaid case law by learned counsel for the petitioners.

It should be noted that the Court below was conscious of the parameters to be met for the grant of injunction and taking into consideration the same, in view of the recitals of the questioned agreements, had proceeded to decide the application. The purpose was kept in mind of the preservation of the state of things as existing, till the decision of the suit.

Very true, there is note in the jamabandi given about the land to be *nazool* land, which cannot be transferred by way of agreement to sell, sale deed, gift deed or any other manner, but the same will go by way of

inheritance. Meaning thereby, the sellers were well aware, at the time of executing agreement to sell, that the land, which they are going to transfer is a *nazool* land and instead of having full knowledge, they transferred the same to the plaintiffs and received the consideration. It has been rightly observed by learned Court below that even taking the presumption of these agreements to sell, to have been fraudulently executed, then also, Balvir Singh, during his lifetime, had never challenged the same and even, defendant No.2-Dalbir Kaur, had not so challenged, at any stage. Rather, she had executed an agreement, admitting the execution of the previous agreements and possession having been handed over to the plaintiffs. The impact of the land, being *nazool* land, shall be considered by learned Court below, at the time of final adjudication.

In the given circumstances, while considering the purpose to protect the possession, as existing and considering the necessary ingredients for the grant of injunction, learned Court below had appraised the material in correct perspective and has allowed the application under Order 39 Rule 1 and 2 CPC, which was also affirmed by learned lower Appellate Court. There is no material irregularity or illegality, coming forth, in the impugned order, which calls for interference by this Court.

Hence, the present revision petition sans merit and is hereby dismissed.

February 15, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No