

In the High Court of Punjab and Haryana at Chandigarh

CR No.6060 of 2023(O&M)

Date of Decision: 06.08.2024

Smt. Sunil Kumari

.....Petitioner

Versus

Jaipal

....Respondent

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Dinesh Arora, Advocate for the petitioner.

Mr. R.A. Sheoran, Advocate for the respondent.

RITU TAGORE, J.

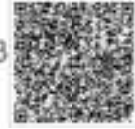
CM No.6789-CII of 2024

For the reasons mentioned in the application, Jamabandi and Mutation are ordered to be taken on record as Annexures P-9 and P-10, respectively, subject to all just exceptions.

The application stands disposed of accordingly.

CR No.6060 of 2023

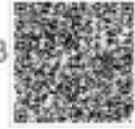
1. Challenge in this revision petition, filed under Article 227 of the Constitution of India, is to the order dated 14.09.2023 (Annexure P-1) whereby learned Additional District Judge, Charkhi Dadri, upheld and affirmed the order dated 29.05.2023 (Annexure P-8), passed by the learned Civil Judge (Junior Division), Charkhi Dadri, allowing the application filed by the respondent/ plaintiff, under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') (Annexure P-5) in Civil Suit No.255 dated 20.03.2023 titled 'Jaipal Vs. Sunil Kumari'



against the petitioner/ defendant.

2. Learned counsel for the petitioner/defendant submits that although learned Additional District Judge, Charkhi Dadri, recorded a finding that parties to the suit are co-sharer in the suit land, and is a joint holding, yet affirmed the order of the learned Trial Court, restraining the petitioner, a co-sharer from interfering in the possession and use of the suit land by the respondent, other co sharer, which is clearly against the settled position of law that no order of injunction lie against a co-sharer, restraining him from using and enjoying the joint property unless same is partitioned by metes and bounds. It is stated that petitioner presented sufficient material on record to show that she is in exclusive cultivating possession of the suit land, after the purchase from Satya Parkash, a co-sharer in the suit land. However, it is submitted by learned counsel, that learned Courts below failed to appreciate the established principle of law that a co-sharer is deemed to be in possession of each and every parcel of the joint holdings until same is partitioned. Learned counsel states that impugned orders are wholly unsustainable in the eyes of law and should be set aside.

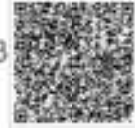
3. Per contra, learned counsel for the respondent/plaintiff defended the order stating that petitioner/defendant when started to cause interference in the exclusive cultivating possession of the respondent/plaintiff, he was constrained to file a suit for injunction. It is stated that revenue record indicate the exclusive possession of the respondent/plaintiff on the suit land. Satya Parkash son of Tirloka @ Tiloka, the vendor of the petitioner is not recorded in the exclusive cultivating possession of the suit land bearing killa



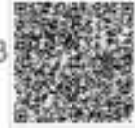
No.316//338-339. Satya Parkash, has sold only a fraction of his share to the petitioner out of the joint holding and on the strength of the same, the petitioner has no right to interfere in the exclusive cultivating possession of respondent on the suit land until same is partitioned. Learned Counsel submits that a co-sharer in exclusive cultivating possession has right to protect his possession from other co sharer, until the joint holding is formally partitioned. It is stated that learned Courts below have rightly granted the injunction in favour of the respondent/plaintiff, restraining the petitioner from interfering in the peaceful possession of the respondent on the suit land.

4. I have heard counsel for the petitioner, gone through the paper-book and the documents annexed.

5. Jamabandi for the year 2019-20 (Annexure P-9) indicates that the suit land is a joint holding between the parties and has not been formally partitioned as yet. However, the entries in the Jamabandi (Annexure P-9) show that co-sharers are in separate cultivating possession on the separate parcels of the joint holding. The khatoni/s entries indicate the separate cultivating possession of the co-sharers. Khatoni No.74 comprises of khasra Nos.80, 206 and 293, total measuring 11 bigha 9 biswas. In these khasra numbers, Tirloka @ Tiloka, father of Satya Parkash (the vendor of the defendant), Shree Chand (father of the respondent/plaintiff) along with other co-sharers are recorded to be in cultivating possession of the aforesaid Khasra numbers. Similarly, in khatoni No.83, Shree Chand, father of the respondent/plaintiff, is shown to be in cultivating possession of suit land



bearing khasra No.316 measuring 8 bigha 3 biswa. The vendor of the petitioner, Satya Parkash son of Tirloka @ Tiloka, is not recorded in cultivating possession of the suit land i.e. khasra No.316//338-339. In, khasra girdawari (Annexure P-10) for *kharif* (10/2022) and *rabi* crop (02/2023), Shree Chand, father of the plaintiff, is shown to be in cultivating possession of the land. Again, the vendor of the petitioner is not shown in cultivating possession of the land. This supported the version of the plaintiff that he is in exclusive cultivating possession of the suit land. The sale deed dated 24.12.2010 (Annexure P-2) executed in favour of the petitioner by Satya Parkash indicate that 2 bighas out of total land measuring 213 bigha 15 biswas (share 40/4275) was sold in favour of the petitioner. The vendor further shown to have handed the possession of 02 bighas in khasra No.316//338-339 in the southern side. As noticed above, the vendor of the petitioner has not been recorded in cultivating possession of the suit land khasra No.316//338-339, in the revenue record, so as to presume that he has handed his cultivating possession to the petitioner. It is settled law that presumption of truth is attached with the revenue record, though rebuttable. However, no material like any report of taking actual possession of the suit land or Khasra Girdawari, has been placed on record by the petitioner to show and suggest that she was put in cultivating possession of the suit land by its vendor or she has been in cultivating possession of the suit land. On the contrary, the petitioner's father is shown to be in cultivating possession of the suit land. It is also well established principle of law that where a co-sharer is in exclusive cultivating possession of the suit land, has a right to



enjoy the said exclusive possession out of the joint holding until the same is disturbed by partition. In Gurjant Singh vs. Jagdev Singh and Others, 2020(4) R.C.R.(Civil) 815, it is observed that '*suit for permanent injunction by a co-sharer against others co-sharers not maintainable unless and until he is able to prove his exclusive possession*'; and Major Singh vs. Joginder Singh, 1994(1) R.R.R. 246, it ruled that '*co-sharers are entitled to remain in joint possession till their shares are separated by effecting partition*'.

6. In the light of the aforesaid discussion and reasoning, it is held that the learned Courts below have appropriately appreciated the evidence appearing on record and rightly concluded the existence of three basic ingredients, namely, *prima facie* case, balance of convenience in favor of the respondent/plaintiff and irreparable loss to the respondent/plaintiff due to the unlawful interference by the petitioner in the exclusive possession and use of the suit land by the respondent, and has rightly granted the interim injunction in favour of the respondent/plaintiff, restraining the petitioner/defendant from interfering in the peaceful possession of the respondent/plaintiff over the suit land.

6. In view of the aforesaid discussion, this Court is of the view that learned Courts below have rightly exercised the jurisdiction that is vested in them. There is no illegality, irregularity, infirmity or perversity in the impugned order, warranting any intervention by this Court.

7. The revision petition stands dismissed, accordingly.

8. It is noted that observations made above should not be construed as an expression of opinion on the merits of the case. Same are purely



confined to the present controversy and deliberations.

9. Pending miscellaneous application(s), if any, is/are disposed of accordingly.

AUGUST 06, 2024
d.gulati

(RITU TAGORE)
JUDGE

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