

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-7828-2023 (O&M)
Date of decision : 07.03.2024

Rajinder Singh (since deceased) through LR ... Petitioner(s)

Versus

Sant Parkash Singh & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. N.S. Kamboj, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

1. The present petition has been preferred under Article 227 of the Constitution of India impugning the order dated 14.01.2022 and the order dated 22.08.2023 passed by the Trial Court and the First Appellate Court respectively rejecting the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908.
2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for declaration and permanent injunction with respect to the land measuring 272 kanals 15 marlas fully described in the plaint. Originally Beant Kaur was the owner of the suit land. However, it was averred that the possession was with the plaintiff-petitioner since Beant Kaur was residing out of village Mumara. A sale deed was executed by Beant Kaur in favour of Jangir Singh father of defendant-respondent No.1 on

20.04.1972. The possession of the suit land was to be delivered on the date of the execution of sale deed. However, possession of the suit property could not be delivered to Jangir Singh because sale consideration was not paid by Jangir Singh to Beant Kaur. It is further the case that after the execution of the sale deed, on the next day i.e. on 21.04.1972, the plaintiff-petitioner cultivated the suit land. Jangir Singh came to stop the plaintiff-petitioner, however, he refused to stop on the ground that no sale consideration was paid to Beant Kaur. It was further averred that the plaintiff-petitioner had been in possession for the last 40 years i.e. since 21.04.1972 and his possession was open, hostile, uninterrupted and against the rights of defendant-respondent No.1. Alongwith the suit, an application under Order 39 Rules 1 and 2 CPC was also filed. The Trial Court vide order dated 14.01.2022 dismissed the said application holding that no *prima facie* case was made out in favour of the plaintiff-petitioner and balance of convenience did not lie in his favour. Aggrieved by the same an appeal was filed which was also dismissed vide order dated 22.08.2023. Hence, the present revision petition.

3. Learned counsel for the plaintiff-petitioner would contend that the plaintiff-petitioner has been in possession for the last 40 years and his possession has been open, hostile and uninterrupted since 21.04.1972 and hence injunction ought to have been granted.

4. I have heard the learned counsel for the plaintiff-petitioner.

5. In the impugned order dated 22.08.2023 it has been observed

that defendant-respondent Nos.2 to 6 claimed to have purchased the property from defendant-respondent No.1 on 30.12.2019. Mutation Nos.3013, 3014, 3015 reflects that some part of the suit property was purchased by defendant-respondent No.2 from defendant-respondent No.1 and some part was purchased by defendant-respondent No.3 from defendant-respondent No.1 and some part was purchased by defendant-respondent No.4 from defendant-respondent No.1 and on the basis of the mutation No.3016 some part was purchased by defendant-respondent No.5 from defendant-respondent No.1. On the basis of the mutation No.3017 it has been held that some part was purchased by defendant-respondent No.6 from defendant-respondent No.1. On the basis of the order dated 10.01.2020 passed by the Assistant Collector Grade-II, Sadiq, possession of the suit property was recorded to be with Gursewak Singh etc. and khasra girdawari was allowed to be corrected in favour of defendant-respondent Nos.2 to 6 in the presence of the plaintiff-petitioner. It has further been noticed that though it is a pleaded case of the plaintiff-petitioner that no consideration had passed, however, Beant Kaur who is admittedly the original owner has not been impleaded as a party. It is also settled law that once a person comes to Court claiming adverse possession he has to first admit the ownership of the other party. In the present case on one hand the ownership of the defendant-respondents had been denied and Beant Kaur who as per the averments made in the plaint is the original owner of the property has not been impleaded in the present case.

6. In view of the above it has rightly been held by the Courts that no *prima facie* case is made out in favour of the plaintiff-petitioner nor balance of convenience lies in his favour. The present revision petition being devoid of any merit is, accordingly dismissed. Pending applications, if any, also stand disposed off.

07.03.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO