

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6707-2023 (O&M)
Date of Decision:-22.02.2024

Daljit Singh son of Kartar Singh

... Petitioner

Versus

Daljit Singh son of Bachint Singh and Others

... Respondents

:-

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Mr. Sunil Tiwari, Advocate with
Ms. Shubreet Kaur, Advocate
for the petitioner.

RITU TAGORE, J. (Oral)

1. The challenge in the present revision petition is to order dated 04.07.2023 (Annexure P-19) passed by learned Civil Judge (Junior Division), Ludhiana in CM-35972-2013 titled as Daljit Singh vs. Sukhbir Singh and Others.
2. Learned counsel for the petitioner has produced copy of order of this Court dated 24.01.2014 passed in RSA-4663-2011, which is taken on record subject to all just exceptions.
3. Keeping in view the limited scope of prayer involved in the present revision petition, issuance of notice to the respondents is waived off.

4. I have heard learned counsel for the petitioner and have gone through the paper-book minutely.

5. Learned counsel for the petitioner submits that the petitioner and respondents No.2 and 3 purchased *Taur* measuring 0B-1B-15B *Pukhta* from Smt. Mohinder Kaur vide sale-deed dated 07.11.1990 and rectification deed dated 13.02.1991 and came in possession of land. Learned counsel further submits that the respondent No.1/plaintiff filed a civil suit No.199 of 1991 for possession of the site and house/structure constructed in the land measuring 0B-1B-15B out of the land measuring 5B-0B-5B *Pukhtas* compromised in Jamabandi for the years 1987-1988 situated in village Gujarwal Tehsil and District Ludhiana, claiming their ownership on the said land on the basis of sale deed dated 27.12.1990. Learned counsel submits that the aforesaid suit (Annexure P-1) was decreed by learned Senior Sub-Judge, Ludhiana in favour of the plaintiff. The civil appeal No.32 of 25.01.2007 (Annexure P-4) preferred by the petitioner and respondents No.2 and 3 against the aforesaid judgment and decree dated 12.12.2006 (Annexure P-3) was also dismissed vide judgment dated 14.05.2009 and the cross-objections filed by respondent No.1 were also dismissed. The petitioner and respondents No.2 and 3 preferred Regular Second Appeal No.4663 of 2011 titled as Sukhbir Singh and Others vs. Daljit Singh and Others.

6. Learned counsel submits that respondent No.1/plaintiff/decreed-holder filed a miscellaneous application No.35972 of 2013 titled as Daljit Singh vs. Sukhbir Singh and others for final partition of the suit property (Annexure P-5). The petitioner and other judgment debtors filed written reply (Annexure P-6) to the aforesaid civil miscellaneous application.

7. Learned counsel for the petitioner further submits that the learned Civil Judge (Junior Division), Ludhiana vide order dated 13.12.2013 appointed a Local Commissioner and directed to inspect the suit property after giving notices to the parties and also directed to propose a mode of partition vide order dated 14.01.2016 (Annexure P-9). The said Local Commissioner filed his report dated 25.11.2016 (Annexure P-10). The petitioner and respondents No.2 and 3 filed their objections against the report of the Local Commissioner. The learned counsel submits that the learned Civil Judge (Junior Division), Ludhiana (Annexure P-16) directed the petitioner and respondents No.2 and 3 to suggest any other mode of partition and also observed that if any alternative mode of partition was not suggested, the mode of partition suggested earlier would be deemed as final.

8. Learned counsel for the petitioner submits that respondent No.1 filed response (Annexure P-18) pleading that reports of the Local Commissioner are accurate and that petitioner and respondents No.2 and 3 have no claim over the suit property and has no right to raise objection. Learned counsel further submits that learned Civil Judge (Junior Division) Ludhiana (Annexure P-19) wrongly allowed the application bearing CM-35972-2013. The learned counsel submits that the aforesaid order has been passed on the basis of conjunctures and surmises and that learned lower Court failed to consider the observations made in the previous order dated 09.04.2019 wherein petitioners were asked to give their mode of partition and also observed that suit property is still joint and specific share to the decree-holder as submitted by the Local Commissioner was untenable. It is

further submitted that the petitioners have purchased the land from Tej Kaur. A prayer is made to set-aside the order.

9. It is undisputed that civil suit No.199 of 20.11.1991 was decreed in favour of the respondents No.1-Daljit Singh son of Bachint Singh. The appeal preferred by the present petitioner-Daljit Singh son of Kartar Singh and others (respondents No.2 and 3) was dismissed vide order dated 14.05.2019 and in para No.16, the learned Appellate Court has categorically observed that the defendants No.1 to 3 (petitioner before this Court and respondents No.2 and 3) have failed to prove that Mohinder Kaur (wrongly mentioned as Singh) was owner of Khasra No.97, which they had purchased on 7.11.1990. It is also a matter of record that Sukhbir Singh and Others (respondents No.2 and 6) had filed a RSA No.4663 of 2011, which was dismissed on 24.01.2014 and the present petitioner and respondents No.2 and 3 were held as trespasser on the suit land. The sale deed coming in their favour was held as not legal. The learned Executing Court while passing impugned order keeping in view the above-said facts and circumstances concluded that the present petitioner and respondents No.2 and 3 have no *locus standi* being stranger to suggest any mode of partition pertaining to suit property and the petition for final partition shall be adjudicated in the light of the pleadings, arguments and mode of partition suggested only by the co-sharers but not by the strangers. The material observations made by the learned trial Court are as below:-

“I have heard the contentions put forth by the counsel for the applicant and counsel for the respondents no.1 to 3 and have gone through the material placed on record. After hearing the contentions put forth by the counsels, this Court is of the considered opinion that the plea

taken by the respondents no.1 to 3 in their written statement that they purchased the suit property from Mohinder Kaur respondent no.4 has already been discarded by the court of Sh. Manjinder Singh, ADJ, FTC, Ludhiana vide judgment and decree dated 14.05.2009 who has specifically stated in paragraph no.13 that defendants have failed to prove on record that on 07.11.1990 when they purchased the property, Mahinder Kaur was owner of the same as per the jamabandi for the year 1987-88. Vide the mutation no.3175 property of Tejpal Singh was inherited by Mohinder Kaur on the basis of sale deed. Mohinder Kaur onwards sold this property to Nachhatter Kaur and others on 19.11.1990. In view of the documents Ex.PX i.e. mutation no.3261 share of Tejpal Singh was purchased by Mahinder Kaur on 11.02.1991. Document Ex. PX clearly shows that she became joint owner of khasra no.87, 97, 98 and 99 on 11.02.1991 then how she can alienate the property to the defendants on 07.11.1990 when she was not owner of the same and had no valid title. Even in the sale deed dated 07.11.1990 no khasra number got mentioned. If she was owner of the same then how it is possible that she was not knowing the khasra number of her own property. Hence she cannot confer any valid title to the defendants and ultimately defendants failed to prove their title over the suit property. Hence, their possession of the suit property is termed as of trespasser and ultimately held that the judgment and decree passed by civil court of Sh. Manjinder Singh is upheld, whereby, the defendants/applicants failed to prove their case. Ultimately, appeal was dismissed.

Hence, the judgment of the superior court of Sh. Manjinder Singh, ADJ, Ludhiana, it came out that the sale deed of the decree holder duly upheld while sale deed of the defendants duly discarded on merits and moreover, it has also been duly proved that defendants/respondents no.1 to 3 are not co-sharers in the suit property, but only decree holder

and respondents no.4-15 are co-sharer in the suit property. If defendants/respondents no.1 to 3 are having no right, title or interest in the suit property who have been ranked as trespasser then they have no right to seek any substantive relief from this court and even have no right to raise any objection in the petition moved by the petitioner for passing final decree on the basis of preliminary decree already passed by the court. Being strangers respondents no.1 to 3 even have no right to suggest any mode of partition pertaining to the suit property and the petition for final partition shall be adjudicated in the light of the pleadings, arguments and mode of partition suggested by the only co-sharers but not by the strangers.

In the present case, all the other co-sharers no. 4 to 15 already proceeded exparte, whereas, petitioner has already been submitted the mode of partition under the signature of Jagir Singh Kanungo dated 25.04.2016 attached with the judicial file, whereas, all the khasra no.87, 97, 98 and 99 has duly been reflected therein and the khasra no.97 showed in blue colour depicted in the possession of Daljit Singh petitioner. Along with the same, there is the report of same kanungo with the averments that the demarcation of the khasra no.97, 98 and 99 duly conducted which is intact on the spot. On the spot the disputed area is bearing khasra no.97 (0B-1B-15B) which is duly constructed along with the four walls and this specific area alienated to Daljit Singh petitioner from Tej Kaur widow of Tara Singh whereby, mutation no.3259 duly sanctioned in favour of Daljit Singh. In the column of cultivation khasra no.97 reflected in the name of Tej Kaur and further sold to Daljit Singh petitioner. Hence the report is duly submitted. Along with this report the presence memo of all the necessary parties is attached therewith.”

11. Keeping in view the above facts and circumstances, I find that the learned Executing Court committed no jurisdictional error in passing the impugned order. The petitioner being stranger certainly has no *locus standi* to participate in the partition proceedings. The petitioner may take course to legal remedy, as available to him if any, under the law, with respect to his alleged possession. Accordingly, the present revision petition stands dismissed in the above terms.

12 Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

22.02.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No