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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-6816-2023 (O&M)

Date of decision: 15.10.2024

Amar Singh (deceased) through his LRs

...Petitioner(s)

Versus

Gopi Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Shalender Mohan, Advocate for the petitioner(s).

VIKAS BAHL, J. (ORAL)

CM-20857-CII-2023

1. This is an application filed under Order 22 Rule IV read with Section 151 of CPC for bringing on record legal heirs of the petitioner namely Amar Singh as necessary parties.

2. For the reasons stated in the application which is supported by an affidavit, the present application is allowed and legal representatives of the petitioner namely Amar Singh as mentioned in para 5 of the application are ordered to be impleaded as parties subject to just exceptions and solely for the purpose of pursuing the main revision petition and the same would not be construed as an adjudication on the entitlement of the estate of the petitioner.

Main case

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 20.10.2023 (Annexure P-8) passed by the Additional District Judge, Hisar, whereby



an appeal filed against the order dated 08.08.2023 (Annexure P-6) has been dismissed. Challenge has also been made to the order dated 08.08.2023 (Annexure P-6) passed by the Additional Civil Judge (Senior Division), Hisar whereby injunction has been granted to the respondents/plaintiffs on the application filed by them under Order 39 Rules 1 and 2 CPC.

2. Brief facts of the present case are that the respondents/plaintiffs had filed a suit for permanent and mandatory injunction restraining the present petitioner(s) from creating any hurdle/obstacles including the land of passage into his field which was stated to be 2 karam wide as shown in the red colour in the site plan attached with the plaint situated in Village Singhran, Tehsil and District Hisar, on the averments that the passage in question is in existence from the time of predecessor-in-interest of the parties and the respondents/plaintiffs were using the passage in question for going to their fields since long and except the passage, there was no another passage to access their land. It was the case of the plaintiffs in the plaint that the parties were co-sharers in the land in question and the same was partitioned between the parties to the suit and regarding the same, mutation No.568 dated 06.09.2006 was entered into and thereafter, the plaintiffs were made exclusive owners in possession of suit land comprised in specific khasra numbers and even the defendant was made exclusive owner of land measuring 11 kanals 2 marlas comprised in specific khasra numbers.



3. The details of the land in the ownership of the plaintiffs were also given in para 2 of the plaint and the same were to the effect that plaintiff No.1 was made exclusive owner to the extent of 12 kanals 19 marlas, plaintiff No.2 was made exclusive owner to the extent of 13 kanals 0 marla and plaintiff No.3 was made owner to the extent of 19 kanals 17 marlas. Although, the copy of the plaint has not been annexed along with the present revision petition but the same has been handed over during the course of arguments. Paras 2 to 5 of the plaint are reproduced hereinbelow:-

“2. That initially predecessors of the parties were the co sharers and later on the said land was partition between the parties to the suit as clear from mutation No.568 dated 6.9.2006. The plaintiff No.1 is exclusive owner in possession of land measuring 12K-19M comprised in Khewat No.326//249 and Khatauni No.386 and khasra No.9//3(7-7) 8/2(5-12) as per Jamabandi for the year 2017-18 and plaintiff No.2 is also exclusive owner in possession of land measuring 13K-OM comprised in Khewat No. 327//250, Khatauni No.387 and Khasra No.9//7(8-0)8/1(2-8), 4/2(2-12) and the plaintiff No.3, Ganga Ram is owner in possession of 19K-17M bearing Khasra No.3//22/3(4-4), 23/1(3-18), 9//2(7-7) 9/1(4-8) comprised in Khewat No.322 Khatuni No.382 situated at Village Singhran Tehsil and District, Hisar.

3. That the defendant is also exclusive owner in possession of land measuring 11K-2M bearing Khasra No.3//23/2(3-15) 24(7-7) situated at Village Singhran Tehsil and District, Hisar.



4. *That predecessor in interest of the parties **left the kacha passage of 2 karams width as shown in the red colour in the attached site plan for the purposes of ingress and outgress of their concerned fields. The plaintiffs and other owners of the field are using the passage in question since long. It is submitted that there is no another passage for ingress and outgress to their fields and vehicles are also being passed from the passage in question.***

5. *That the defendant is strong headed and influential persons and he is having evil on the passage in question **and wants to include the said passage into his field** for which he has no right under the law.”*

4. A perusal of the above paras No.2 to 5 of the plaint would show that it was also the case of the plaintiffs that the predecessor-in-interest of the parties had left a kacha passage of 2 karam width for the ingress and outgress of their fields which was shown in the red colour in the site plan attached along with the plaint. A written statement was filed in the said suit. Along with the said suit, an application under Order 39 Rules 1 and 2 CPC was also filed. The said application has not been annexed along with the present petition. As is apparent from the order dated 20.10.2023, the suit was instituted on 03.05.2023 and thereafter, notice was issued on 04.05.2023 and on the said date, a request was made by counsel for the plaintiffs for appointment of a Local Commissioner and vide order dated 04.05.2023, the Local Commissioner was appointed and on 09.05.2023, the Local Commissioner had submitted a report confirming the existence of the said passage. It is further apparent that the



present petitioner(s) had put in appearance and had objected to the said report and had expressed his willingness that another Local Commissioner be appointed to bring on record the existing position of the passage and thereafter, with the consent of both the parties, Sh. G.C. Verma, Advocate was appointed as the Local Commissioner and it was specifically recorded in the impugned order that there was consensus with respect to his name, which fact could not be disputed before this Court. It is further apparent from the said order that the Local Commissioner had visited the spot and had found six persons present there including son of the defendant and also lambardar namely Rohtash Kumar, in addition to the representatives of the plaintiffs and the said report was signed by all the persons and the spot was identified. The trial Court vide order dated 08.08.2023 had observed that as per the report of both the Local Commissioners, there existed a passage at the spot and thus, it was stated that the plaintiffs had a prima facie case and the existence of the rasta in question stood corroborated, prima facie and accordingly, granted injunction to the plaintiffs to the effect that the defendants were restrained from interfering in the use of the passage as depicted in the report of the Local Commissioners.

5. An appeal was filed against the said order and the First Appellate Court vide order dated 20.10.2023 after noticing the detailed facts, in para 11, reproduced the relevant portion of the report of the Local Commissioner, which was appointed on consensus between the parties and observed that on the basis of the report of the second Local



Commissioner and the attached site plan, it was revealed that the existence of the said passage was confirmed and accordingly, the appeal was dismissed.

6. Aggrieved against the said order, the present revision petition has been filed. The case was adjourned on the request of learned counsel for the petitioner(s) on three dates.

7. Learned counsel for the petitioner(s) has challenged the impugned orders on the grounds that the trial Court had in the order dated 08.08.2023 observed that the consolidation proceedings had not been undertaken in the present village due to which there was no entry of the rasta at the spot in the revenue record and it is thus, submitted that the said passage is not reflected in the revenue record and only on the basis of the report of the Local Commissioners, the injunction had been granted which is illegal and has stated that the orders passed solely on the basis of report of the Local Commissioners are unsustainable and deserve to be set aside.

8. The argument raised by learned counsel for the petitioner(s) is meritless and deserves to be rejected. As has been noticed hereinabove, the case of the plaintiffs was that there was partition between the parties and regarding the same, mutation No.568 dated 06.09.2006 was entered into and thereafter, the plaintiffs became exclusive owner in possession of land comprised in specific khasra numbers and the defendant also became exclusive owner in possession of land comprised in specific khasra numbers and since the parties were earlier co-sharers thus, a 2 karam



width passage was kept for the parties for ingress and outgress to their concerned fields and it was further the case of the plaintiffs that they have been using the said passage since long and that they have no other alternative passage. The appointment of the first Local Commissioner who had stated that the passage was there, was opposed by the defendant/petitioner(s). However, as is apparent from para 11 of the order dated 20.10.2023 passed by the First Appellate Court, counsel for the petitioner(s) appearing before the First Appellate Court had expressed his willingness that another Local Commissioner be appointed and it had been specifically recorded that it was with the consent of both the parties that the second Local Commissioner was appointed and even the name of the counsel i.e., Sh. G.C. Verma, Advocate was given with consent. It was also recorded in the said order, which could not be disputed before this Court, that son of the defendant as well as lambardar were also present at the time of spot inspection by the Local Commissioner. The said report dated 10.05.2023 has been annexed by the petitioner(s) as Annexure P-4 along with the present revision petition and the relevant portion of the same is reproduced hereinbelow:-

*“I received the robkar and the photocopy of the site plan from the court itself to enable me to locate the spot. I went on the spot at 5:00 PM on 10/05/2023. On the spot about six persons including MS. Indrawati wife of Ganga Ram (Plaintiff). Sh. Gopi Ram (Plaintiff), **Sh. Monu S/o Sh. Amar Singh (Defendant), Sh. Rohtash Kumar (Lambaradar) of Village Harikot** and two more persons*



were present there. Copy of the attendance sheet duly signed by aforesaid persons is enclosed. Aforesaid persons identified the spot and I also tallied the same from said site plan. I entered the road from main road shown in photograph (1) at point (A). kept on moving on the said Kaccha Road from point A to Point B shown in enclosed site plan. The said kaccha path comes to an end at point B, shown in photograph number 2. There was no kaccha path from point B to C in said plan. However, from C to D the Kaccha path was again started as shown in the said plan and photographs number 11 & 12. Area from B to C is about 300 feet in length. The width of kaccha road from A to B and C to D is about 10 to 11 feet. Kaccha Road shown in point A to B and C to D is about 2 feet in height as compare to the field located in both side of the kaccha road. However, the area from B to C is in the level of fields and abutting the area from B to C. The Earth has been removed and collected on one side of the said area of about 300 feet in length shown with arrow() near point B & C and also shown in photographs number 3,4,6, 7, 8, 9 & 10 at point A to B. The kaccha path from point A to B ends at point (A) shown in photographs 3, 5, 7, and 10.

Thus in my observation there is kaccha rasta from A to B and C to D However there is no rasta from B to C which appears to be closed by ploughing and merging in the field as the Earth removed from the place in order to make it in the level of fields and the earth removed from the field is lying on the side as shown with the arrow. So in my opinion Kachha Road from BC has been closed for a distance of about 300 feet in length. I took 12 photographs from mobile and got developed the same from Ganpati



Colour Lab and same are correct as per the spot.....”

9. A perusal of the above report would show that the spot in question was identified by the persons who were present at the spot which included the son of the defendant and also lambardar and the same was also tallied with the site plan. The photographs of the site were also clicked and were made a part of the said report and it was on the basis of the inspection that the Local Commissioner had observed that there was katcha rasta from point A to B and C to D and rasta from B to C had apparently been closed by ploughing and merging in the field, as the earth was removed from the place in order to make it a level field and even the earth which was removed from the field is lying on the side as shown with the arrow.

10. The Courts, thus, on the basis of the said report and pleadings, prima facie came to the conclusion that the rasta was in existence and a part of the same was shown to be demolished by the petitioner(s)/defendant and the version of the plaintiffs was prima facie proved. This Court finds that there is no infirmity or illegality in the said order. The injunction order was passed on 08.08.2023 and has continued till date. The sole argument raised on behalf of learned counsel for the petitioner(s) to the effect that the said rasta is not reflected in the revenue record, does not call for setting aside the impugned orders passed as once the Courts had prima facie come to the conclusion that there existed a passage at the spot and the said passage was made by the co-sharer at the time of partition in order to have access to their land, then the mere fact



of the said passage not being reflected in the revenue record could not be made the basis for setting aside the impugned orders. It is common practice that when private partition is effected between the co-owners, then by mutual consent, a passage is provided to each of the co-sharers for having access to their land, which has been allotted to them in the private partition. Invariably, the said passage is not reflected in the revenue record, as the same is provided from the joint holding of the co-sharers. Moreover, in the present case it has not been shown to this Court that there is any alternate passage available to the plaintiffs to access their land.

11. Keeping in view the abovesaid facts and circumstances, the impugned orders are in accordance with law and deserve to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

12. It is however clarified that the observations made in this order are only for the purpose of considering the legality or otherwise of the orders passed under Order 39 Rules 1 and 2 CPC and the trial Court would proceed in the matter and would decide the main suit independent of the observations made by this Court on the basis of the evidence and pleadings led before the trial Court.

13. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

15.10.2024

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No