

121.

2024:PHHC:026584

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

Civil Revision No.7118 of 2023

Date of decision: 26.02.2024

Kulwinder Singh

... Petitioner

Versus

Sukhwinder Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Sarju Puri, Advocate, for the petitioner.

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order 11.10.2023 (Annexure P-1) passed by learned Civil Judge (Junior Division), Garhshankar, vide which, the application moved by the petitioner along with respondents No.2 and 3 (hereinafter called, “defendants”) under Order 7 Rule 11 CPC for rejection of the plaint, has been dismissed.

2. Brief facts of the case are that respondent No.1-plaintiff (hereinafter called, “plaintiff”) filed a suit for permanent injunction restraining the defendants from interfering in her peaceful and lawful possession and from demolition of any part of residential house property and from interfering in the privacy of the plaintiff by installing CCTV camaras towards the house in question, *inter alia*, on the ground that the plaintiff is in possession and has been residing in the suit property since long along with her family, being niece of one Udham Kaur and has also obtained water connection in her name and is holding possessory title

over the house in question. The case of the plaintiff further is that even the other properties belonging to Udham Kaur and her sons, namely, Balbir Singh and Balwant Singh are in possession of the plaintiff being their close relative as Balbir Singh etc. are NRIs and have handed over the entire management of their property in India to the plaintiff. The defendants are threatening to interfere in the peaceful and lawful possession over the suit property.

2.2 Upon notice, defendants filed written statement and contended that the plaintiff is in unauthorized occupation of the suit property. The suit property belongs to Balbir Singh and Balwant Singh, who are residing abroad.

2.3 During the pendency of suit, defendants filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that servant/caretaker is not entitled to file suit even on the basis of long and settled possession.

2.4 Vide order dated 11.10.2023, said application was dismissed on the ground that the suit is only filed for permanent injunction restraining defendants from interfering in the possession of the plaintiff upon suit property. An application for temporary injunction was also filed which was allowed vide order dated 14.07.2023 and the defendants were restrained from interfering in the peaceful possession of the plaintiff of the suit property till disposal of the suit. The objection raised by the defendants regarding maintainability of the suit has already been

taken care of by framing issue of maintainability of the suit. At the time of deciding the application, the Court had also held that the plaintiff is in possession of the house, in question, as licensee of Balbir Singh and Balwant Singh and the suit ought to be decided on merits.

2.5 Aggrieved against the said order, defendant No.1-Kulwinder Singh has approached this Court by way of present revision petition.

3. Learned counsel for the petitioner has argued that a caretaker or a servant is not entitled to file a suit even on the basis of his/her long and settled possession. Respondent No.1-plaintiff is claiming possession over the suit property as a caretaker on behalf of its owners, namely, Balbir Singh and Balwant Singh. Reliance is placed on ***Behram Tejani and others Versus Azim Jagani, 2017(1) RCR (Civil) 723***. It has been further argued that since the plaintiff has no independent right to be in possession of the suit property, the suit is not maintainable and it deserves to be rejected.

4. I have heard the submissions of learned counsel for the petitioner and have gone through the file.

5. In the revision petition itself, the petitioner has referred to para Nos.1 and 2 of the plaint, which are as under:-

“1. That the plaintiff is in possession of the house marked as A B C D shown red in colour in the site plan bounded as fully detailed in the headnote of the plaint, situated in the area of village Jhaj, Tehsil Garhshankar. She is residing in this house since long with her family being niece of Udham Kaur wife of Kanrail Singh. The plaintiff has taken water supply connection in her name in the house in question.

Electricity bills are also being paid by her regularly. The Aadhar Card of the plaintiff and her children and other documents have been issued in their names in this house. Thus, the plaintiff holds possessory title in the house in question. The other properties along with shops and agriculture land of Udham Kaur and her sons namely Balbir Singh and Balwant Singh sons of Karnail Singh are in possession of the plaintiff being their closed relatives. Balbir Singh etc. are N.R.I. and have handed over the entire management of their property in India to the plaintiff. Thus, in this manner, the plaintiff is in lawful and peaceful possession in the residential house.

2. That the defendant No.1 who is very head strong and shrewed man, in connivance with other defendants, have started threatening the plaintiff that he will interfere into the lawful and peaceful possession of the plaintiff in the house in dispute illegally and forcibly and that he will interfere into the privacy of the plaintiff by installing CCTV Cameras towards the house in dispute to which they have no right. The defendant No.1 has also filed a false civil suit against the plaintiff and others while claiming a passage through the property in possession of the plaintiff. The threats of the defendants are wrong, illegal, against law and facts. In case they succeed in their illegal motive, then the plaintiff would suffer an irreparable loss and injury which cannot be compensated in any manner. Thus, the plaintiff is entitled to the decree for permanent injunction against the defendant as prayed for."

5.1 Prima facie, the plaintiff is proved to be residing in the suit property. It is well settled that for deciding application under Order 7 Rule 11 CPC, the averments made in the plaint are only to be seen. The defence raised in the written statement cannot be seen for deciding such application. There is no dispute about proposition of law that a caretaker/servant cannot seek injunction against the owner. Plaintiff is not claiming that she is owner of suit property. It is the specific case of the plaintiff

that she has been residing in the house since long with her family being niece of Udham Kaur wife of Karnail Singh. The suit is neither filed against Udham Kaur nor her sons Balbir Singh and Balwant Singh. The defendants are third persons. The plaintiff has got every right to protect her possession if there is any interference from third person. The case of the plaintiff further is that other properties along with shops and agriculture land of Udham Kaur and her sons, namely, Balbir Singh and Balwant Singh are in possession of the plaintiff being their close relatives. Balbir Singh etc. are NRIs and have handed over the entire management of their property in India to the plaintiff.

6. Since the plaintiff is only seeking injunction against third party on a specific cause of action, so, the suit cannot be said to be barred by any law. There are triable issues and the plaintiff cannot be non-suited at the threshold. A lawful order has been passed by the learned trial Court and no ground for interference is made out. The revision petition is without merit and it is dismissed accordingly.

(GURBIR SINGH)
JUDGE

February 26, 2024
sanjeev

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