

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

2025:PHHC:003494



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CR-100-2025 (O&M)

Date of decision: 13.01.2025

Rajiv Singla

...Petitioner.

Versus

Lalita Devi and others

...Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Namit Gautam, Advocate
for the petitioner.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged order dated 13.12.2024 (Annexure P-10), passed by the trial Court, vide which application filed by the petitioner for permission to visit the property for preparing the site plan after taking measurement and to take photographs, was dismissed.

2. The brief facts relevant for adjudication of the present revision petition are that the plaintiff/ petitioner filed suit for declaration to the effect that the plaintiff is exclusive owner in possession of property as detailed in the head note of the plaint being ½ share in the total property measuring 474-5/6 square yards comprising in khasra No.276, khata No.573/ 891 as per jamabandi for the year 2005-06, on the basis of family settlement duly

acted upon between the parties and further for declaration that alleged sale deed dated 09.04.2012 bearing vasika No.121 dated 09.04.2012 allegedly executed by respondent/ defendant No.1 in favour of respondent/ defendant No.3 in respect to the suit property is illegal, null and void and is liable to be set aside and the same is without consideration or legal necessity. Relief of permanent injunction was also sought restraining the defendants from alienating in any manner any portion of the said property and for restraining the defendants from interfering in the peaceful possession of the said property and dispossessing the petitioner illegally and forcibly from any portion of the said property and also for restraining the defendants from disconnecting the electricity connection in the name of defendant No.1 (now in name of defendant No.3) being used by both, plaintiff and defendant No.3 with sanctioned load of 57.66 KW. It was alleged in the plaint that petitioner/ plaintiff and respondents No.3 and 4 are real brothers and respondents No.1 and 2 are their parents and both the parties are from a joint Hindu family and they had earlier family business of iron/ steel and from the joint family business of the parties, they purchased several properties including property measuring 474.5/6 square yards. It was alleged that the said property was purchased entirely with the joint family funds of the parties and even on the sale deed through which this property was purchased contains signatures of respondent No.2 on behalf of purchaser and it is not having signatures of respondent No.1. After purchase of said property, parties mainly through respondent No.2 Surat Ram started running the joint family business on the ground floor of the property. Respondent No.1 never considered the suit property as her

exclusive property, rather she and other respondents always considered the suit property as joint family property of the parties. Even all the constructions over the suit property were raised with the funds of the joint family of the parties. Thus, the suit property along with other properties are the joint Hindu family properties of the parties. It was averred that in October/ November, 2011 some dispute arose between the parties and then a family settlement was made on 01.11.2011. As per said oral family settlement, property was divided and the actual physical possession of the property was given to the petitioner and since then petitioner is in actual physical possession of the property. The said oral family settlement was thus acted upon and bifurcating wall was constructed dividing the portions between the petitioner and respondent No.3 and the parties took possession of their respective portions. Later on, it was reduced into writing in the shape of family settlement dated 05.11.2011 incorporating all the terms of family settlement arrived at between the parties, which was signed by petitioner and respondents No.1 to 3. Thus, petitioner became exclusive owner in possession of the portion 237-4/60 square yards as shown with red colour in the site plan. Thereafter, respondents with dishonest intention in connivance with each other got prepared transfer deed dated 09.04.2012 bearing vasika No.121 dated 09.04.2012 allegedly executed by respondent No.1 in favour of respondent No.3 in respect to the entire property. Respondent No.1 by concealing the real facts that the original sale deed is lying with the bank under the mortgage for obtaining bank loan, executed the transfer deed illegally in favour of respondent No.3, which is also an act of fraud and misrepresentation with the bank as well as revenue authorities.

3. Respondents No.1 and 3 filed their joint second amended written statement and they denied family settlement and also denied that the oral family settlement was duly acted upon and a bifurcating wall was constructed dividing the portion between plaintiff and defendant No.3 and that the parties took possession of their respective portions. Defendants No.1 to 3 also denied that the oral settlement was reduced into writing in the shape of family settlement dated 05.11.2011. Defendants No.1 to 3 denied that the said family settlement was signed by them.

4. Respondent No.2 also filed written statement admitting the family settlement and also admitted that the electric connection in the name of respondent No.1 with sanctioned load of 57.66 KW was being used by M/s Hammer Industries of India and it had been agreed in the family settlement to be used by the petitioner and respondent No.3 for running their separate business. It was also admitted that respondent No.3 is carrying on his business in his separate portion on the ground floor and petitioner is carrying on his business in his separate portion on the ground floor and electricity bill is being paid alternatively each month by petitioner and respondent No.3. Respondent No.2 also denied the title of respondent No.1 and admitted that she alone had no right to execute any sale deed in favour of respondent No.3.

5. Defendant No.3 filed the counter claim for issuance of direction to the petitioner to put counter claimant in possession of the portion shown as red in the site plan attached with the counter claim.

6. Reply to the said counter claim was also filed. Thereafter, from the pleadings of the parties, the issues were framed vide order dated

08.10.2024 and case was adjourned to 21.10.2024 for plaintiff's evidence. On 21.10.2024, petitioner filed two applications. The first application was filed by the plaintiff under Order 18 Rule 3A CPC seeking the permission to examine the plaintiff after evidence of summoned witnesses, who are witnesses from Government, Semi-Government, Bank Official, Municipal Corporation and PSPCL. Vide order dated 13.12.2024, the said permission was granted by learned Civil Judge (Junior Division), Ludhiana.

7. The other application was filed for seeking permission to visit the property for preparing the site plan after taking measurement and to take photographs. It was alleged that as per case of the plaintiff, there was an oral family settlement between the parties which was reduced into writing on 05.11.2011 and thereafter, a bifurcating wall was constructed dividing the portions between the plaintiff and defendant No.3. In this manner, plaintiff has claimed that he has become exclusive owner in possession of a portion measuring 237-4/60 square yards out of total property. Vide this application, permission to visit the property for preparing the site plan after taking photographs was sought. It was requested that draftsman may visit the entire property to prepare the true and correct plan of property with the bifurcating wall and photographs may also be taken with the help of photographer of both the portions in occupation of plaintiff and defendant No.3.

8. In reply to the said application, it was submitted by defendant No.3 that the said application was not maintainable. Site plan has already been produced by the plaintiff, so no ground is made out to allow the application and other averments made in the application were also denied.

9. Said application was dismissed vide order dated 13.12.2024 by

the trial Court. Aggrieved against the same, the petitioner has knocked the doors of this Court by way of filing the present revision petition.

10. Learned counsel for the petitioner has contended that it is necessary to bring on record the plan of the entire property along with bifurcating wall, dividing the portions between the plaintiff and defendant No.3, which would depict the true and correct picture before the Court. He has further contended that the trial Court has grossly erred in not appreciating another material aspect that respondent No.2 in his written statement not only admitted the family settlement arrived at between the petitioner and respondent No.3 but also admitted that bifurcating wall was constructed. Once the petitioner has prima facie proved the existence of family settlement, then there is no impediment in allowing the draftsman to visit the entire property to prepare the true and correct plan of the property with bifurcating wall and also allowing the photographer to take photographs of both the portions in occupation of plaintiff and defendant No.3. As defendant No.3 while filing the written statement has denied the family settlement and has also denied that on the basis of family settlement bifurcating wall was constructed dividing the portions between plaintiff and defendant No.3, then it is material to prepare the site plan of the entire property only, which would show that entire property was divided into two portions and a bifurcating wall right in the middle was constructed to divide both the portions between plaintiff and defendant No.3. It is required, in order to prove that family settlement was not only arrived at but at the same was also duly acted upon, which would help the Court in adjudicating the matter in effective manner and has prayed that present revision petition be

allowed.

11. I have heard learned counsel for the petitioner and has gone through the relevant record.

12. In the instant suit, plaintiff has sought relief of declaration and permanent injunction and defendants No.1 and 3 also filed counter claim for seeking relief of possession of the portion shown red in the site plan under the possession of plaintiff/ counter defendant on the basis of transfer deed No.121 dated 09.4.2012.

13. Relationship between the parties is not disputed and it is also not disputed that originally suit property was owned by defendant No.1 Lalita Devi. Again this is not disputed fact that the plaintiff is in possession of half portion of the suit property and defendant No.3 is in possession of remaining half portion of the property in dispute. The plaintiff has already placed on record the site plan of the property in dispute and this site plan has not been disputed by the defendant regarding half portion of the suit property with the plaintiff and half portion with defendant No.3. Plaintiff has claimed to be in possession over half portion of the suit property and half of the suit property to be in possession of defendant No.3 on the basis of memorandum of family settlement dated 05.11.2011.

14. Trial Court has rightly observed that when plaintiff claims his ownership on the basis of memorandum of family settlement dated 05.11.2011 and claims that plaintiff became owner over the portion which is under his possession, then site plan of the property under possession of defendant is not necessary and essential for adjudicating the claim of the petitioner regarding the ownership of plaintiff on the half portion of the suit

property under his possession on the basis of family settlement. So, trial Court has rightly reached at the conclusion that no ground is made out for allowing the aforesaid application and it has rightly been dismissed.

15. Thus, there being no illegality or infirmity in the impugned order, no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

16. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

13.01.2025

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No