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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CR-7536-2024 (O&M)
Date of decision:07.01.2025

Savitri

... Petitioner

Vs.

Raj Kumar

... Respondent

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. B.S. Beniwal, Advocate for the petitioner.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 03.09.2024 (Annexure P-8) passed by the Additional District Judge, Hisar vide which the civil miscellaneous appeal titled as '**Savitri Vs. Raj Kumar**' bearing **CIS No.CMA-39-2020** filed by the petitioner/defendant against order dated 07.09.2020 (Annexure P-5) passed by the Civil Judge (Jr. Division), Sub Division Hansi, District Hisar was dismissed by the Appellate Court.

2. The relevant facts for adjudication of the present revision petition are that the suit was filed by plaintiff – Raj Kumar for permanent (prohibitory) and mandatory injunction for restraining the defendant from interfering in his peaceful possession of land measuring 21 kanal 10 marlas being $\frac{1}{4}$ share of total land measuring 86 kanal 0 marla comprised in khewat No.751, khatauni No.1293 and land measuring 7 kanal 1.50 marla being $\frac{1}{4}$ share of total land measuring 28 kanal 7 marlas comprised in khewat No.735 khatauni No.1277 as per jamabandi for the year 2016-17 situated at village

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Ghirai, Tehsil Hansi, District Hisar, claiming himself as co-sharer in the said property. In the plaint, it is averred that plaintiff along with his brothers, namely, Balwan and Krishan Kumar are owners in possession of the suit property on the basis of release deed bearing No.4042 dated 25.09.2019. After execution of the release deed in their favour, actual and physical possession was delivered to the plaintiff and other co-sharers and mutation No.4114 dated 17.01.2020 was sanctioned in their favour on the basis of release deed. It was alleged that defendant has no concern, title or interest in the suit land but he was hell bent to interfere and dispossess the plaintiff from the suit land. Before filing of the suit, defendant along with 5-6 unscrupulous persons came at the spot and tried to interfere in the peaceful possession of the plaintiff over the suit land, but this attempt was foiled.

3. Petitioner who is defendant in the said suit, filed written statement by taking various preliminary objections like suit being frivolous, vexatious, not maintainable, time barred, plaintiff having no cause of action, *locus standi*, bad for non-joinder and mis-joinder of necessary parties, suppression of material facts etc. It was alleged that plaintiff was neither owner of the suit property nor in cultivating possession of the suit property. Plaintiff in connivance with his brothers - Balwan and Krishan Kumar played a fraud upon Satbir (husband of the defendant) and got executed release deed No.4042 dated 25.09.2019 from Satbir Singh of ancestral and coparcenary property in order to deprive the defendant and her children from their valuable right. Aforesaid release deed bearing Vasiqa No.4042 dated 25.09.2019 has already been challenged by defendant and her children and

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as such ownership of the plaintiff over the suit property is still *sub judice* and he cannot claim any perfect title over the suit property. It was averred that husband of defendant (Satbir Singh) was under influence of his brothers i.e. Plaintiffs, namely, Balwan, Krishan Kumar and their sons. Satbir expired on 01.01.2020 and after his death, the entire property was inherited by defendant along with her children in equal shares being the only Class-I heirs. Later on defendant came to know that plaintiff and his brothers played fraud upon Satbir as well as upon her and her children and in collusion with the Tehsildar got executed release deed No.4042 dated 25.09.2019 and also got sanctioned mutation No.4114 dated 16/17.01.2020 which is illegal, unlawful and fraudulent. It was alleged that as land in question is ancestral property, so Satbir Singh had no authority to execute the aforesaid release deed. Vide order dated 10.09.2019 passed by the Family Court Satbir Singh was restrained from alienating the suit property, but despite this Satbir Singh violated the Court order and got executed the sale deed. Satbir Singh had no legal necessity or requirement to execute the alleged release deed. Since he was suffering from cancer, he was not in a sound state of mind. Entry of stay order was also incorporated in the jamabandi for the year 2016-17 but despite said entry, revenue officials with malafide intention registered the aforesaid release deed.

4. Along with the suit, plaintiff filed application under Order 39 Rules 1 and 2 CPC read with Section 151 CPC seeking injunction against the defendant for restraining defendant from interfering in his peaceful possession over the suit land.



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5. Said application was allowed by the learned trial Court vide order dated 07.09.2020 and appeal against said order was preferred by both the plaintiff Raj Kumar and defendant Savitri. Vide impugned order dated 03.09.2024, the first Appellate Court upheld order of learned trial Court regarding allowing of application under Order 39 Rules 1 and 2 CPC and held that defendant has failed to prove his possession over the suit property and while modifying order of trial Court, defendant was restrained from interfering in peaceful possession of the plaintiff. Aggrieved against the said order, present revision petition has been filed by the petitioner/defendant Savitri.

6. Learned counsel for the petitioner has contended that from copies of mutations placed on record, it is proved that Satbir Singh had inherited the property from his forefathers. Courts below erroneously held that no cogent proof was brought on record to establish that land is ancestral one. Land in question is ancestral and coparcenary property and the petitioner is coparcener in the land in question. He has argued that mere filing of litigation for obtaining maintenance allowance, is not a ground to prove that there were no cordial relations between the petitioner and her husband. By playing fraud upon Satbir Singh as well as defendant and her children, in collusion with the revenue officials, respondents succeeded in getting the suit land transferred in their name vide transfer deed bearing Vasika No.4042 dated 25.09.2019. He has urged that learned Courts below have also lost sight of the fact that defendant/petitioner had filed **Civil Suit No.22-C of 18.01.2020 titled as 'Savitri & others Vs. Balwan & others'**



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much prior to the present suit and in that suit, the present plaintiff appeared as defendant, but did not file any counter claim and rather filed the present suit. So the present suit itself was not itself maintainable. He has further urged that while deciding the stay application, learned Court below have decided whole suit of the plaintiff in his favour, which is totally against law. Only from the disputed release deed, possession of plaintiff and his brothers cannot be assumed upon the suit land when as per said release deed, no possession of specific killa/khasra numbers have been given to the plaintiff.

7. I have heard learned counsel for the petitioner at length and have gone through the relevant record.

8. The subject matter in the suit filed by the defendant titled as '**Savitri Vs. Balwan**' is different from the present suit of the plaintiff, as the aforesaid suit is a suit for declaration whereas the instant suit is simplicitor a suit for injunction. Parties in the instant suit are closely related to each other being associated to Satbir Singh, who was owner in possession of the suit land prior to his death. Savitri and her children are L.Rs. of Satbir Singh being his wife and children, whereas Balwan and Krishan are real brothers of Satbir Singh. Prior to his death, Satbir Singh executed release deed No.4042 dated 25.09.2019 of suit property in favour of his brothers, namely, Raj Kumar, Krishan and Balwan. When Savitri and her children came to know about aforesaid release deed, then they filed **Civil Suit No.22-C of 18.01.2020** titled as '**Savitri & others Vs. Balwan & others**' against the three brothers for seeking declaration that aforesaid release deed executed by Satbir Singh was a fraudulent transaction and was liable to be set aside.



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9. One of the brothers, namely, Raj Kumar filed the present suit for seeking injunction titled as **Raj Kumar Vs. Savitri bearing Civil Suit No.70-C dated 14.05.2020** against Savitri. Since both the cases were pending in the same Court and both the parties were claiming their possession over the suit property, vide interim orders dated 17.06.2020 in both the cases directed both the parties to maintain status quo regarding possession and further not to alienate the suit property till further orders. Raj Kumar filed appeal against said order and vide order dated 20.08.2020, learned Appellate Court set aside said order of status quo and restrained Savitri from interfering in the peaceful possession of the plaintiff over the suit property. Learned Appellate Court directed learned lower Court to decide the application under Order 39 Rules 1 and 2 CPC within a period of 3 weeks, which was decided by trial Court in favour of plaintiff - Raj Kumar and thereafter aggrieved of the said order both the plaintiff Raj Kumar and defendant Savitri filed appeal before the learned Appellate Court.

10. Plaintiff has claimed to be in possession of the suit property on the basis of release deed No.4042 dated 25.09.2019 which was executed by erstwhile owner Satbir who was admittedly in possession of the suit property. Recital of the release deed reveals that it was mentioned therein that possession of the land has been delivered to the plaintiff and his brothers. On the other hand, defendant Savitri has not produced on record any document to show that how she came in possession over the suit property. Learned Courts below have rightly held that her status being Satbir's wife is not sufficient to prove her possession. It is also to be noted

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that she herself revealed that she had filed a petition before the Family Court against Satbir Singh to claim maintenance, which shows that she was not having cordial relations with Satbir. In the above factual matrix, it is not probable that defendant ever came in possession over the suit property during lifetime of Satbir. Courts below have rightly held that nature of the suit property being ancestral or transfer of property during stay order of family Court, is to be appreciated at the final stage. Otherwise also, it is a matter of evidence and cogent evidence regarding the same is yet to be adduced by the parties. Courts below have thus rightly reached at the conclusion that plaintiff has prima facie proved his possession over the suit property through release deed and plaintiff is entitled to protect his peaceful possession and the petitioner/defendant has been rightly restrained from interfering in his peaceful possession over the suit property.

11. Thus, there being no illegality or infirmity in the impugned order, no interference therewith is called for while exercising the revisional jurisdiction.

12. The present revision petition being bereft of any merits, stands dismissed.

13. Pending application(s), if any, shall also stand disposed of.

**(SUKHVINDER KAUR)
JUDGE**

07.01.2025
harjeet

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No