

**In the court of Sh. Gursher Singh, PCS, Ld. Civil Judge
(Jr.Divn.), Hoshiarpur. UID No.PB0380**

**Narinder Singh Vs. Mohinder Singh etc. (CS-1003-18)
(CNR No.PBHO020000392018)**

(Application U/O 39 Rule 1&2 read with Section 151 CPC).

Present:- Sh. Amit Kohli Adv. for the plaintiff.
Sh. Rajneesh Kaushal Adv. for defendant No.1 and 2.

ORDER:-

Vide instant application under order 39 rule 1 and 2, the plaintiff contends that he is co-owner/co-sharer of land in dispute and is in possession of land in dispute as per his share. The plaintiff is stated to be cultivating the land and has planted safeda trees on the land, of which, he is claimed to be owner in possession. It is averred that the defendants have no right, title or interest in the property in dispute but even though they are trying to forcibly dispossess the plaintiff from the suit property and is trying to remove and demolish the safeda trees cultivated and grown by the plaintiff. It is submitted that there is party fiction in the village, due to this, the defendant being influential persons of village are misusing their authority and harassing the plaintiff, who is an old aged person. It is averred that the defendants tried to forcibly take the possession of suit land and remove/demolish the safeda trees grown in the land and when the plaintiff intervened in the matter, then he threatened him. It is submitted that the plaintiff requested the defendants not to do so but they have flatly refused. Hence, the present application has been filed.

2. On the other hand, defendants filed reply to stay application, submitting that there is gair mumkin rasta being part of Khasra No.25 situated in Village Mehandipur and the plaintiff has his property towards south side abutting the said rasta. There are stated to be safeda trees standing on the sides of rasta in land bearing Khasra No.25. The plaintiff is stated to be trying to cut trees standing in the kahasra No.25 by taking benefit of his land adjoining the khasra No.25. The act of the plaintiff was foiled many times and even the demarcation of rasta bearing Khasra No.25 was effected by revenue staff and trees have been found to be in khasra No.25 but the plaintiff is adamant to cut and remove the trees. The Gram Panchayat is stated to be in management and control of rasta and khasra no.25. It is submitted that as per demarcation report of revenue staff, the trees are standing in Khasra No.25, therefore, the plaintiff has no connection with the trees standing in khasra No.25.

3. I have heard ld. counsels for the parties and perused the suit file. Vide instant application, the plaintiff seeks that the defendants be restrained from interfering in the peaceful possession of the plaintiff over the land, as is detailed in the headnote of the plaint, more specifically from cutting/removing the eucalyptus trees, claimed to have been planted by the plaintiff in his share/possession of the joint land. The defendants are stated to have no interest in the property. The defendants on their part have refuted the claim of the plaintiff, contending that the trees in dispute stand in the land, which is the ownership/under the management of the gram panchayat (defendant No.2). The plaintiff is stated to have no concern with the trees. As is apparent from the suit file and as has been referred to by

defendant No.2, a demarcation has been got conducted. The report of the said demarcation has been placed on record by the defendant gram panchayat, which clearly enumerates that the trees in dispute stand over the land, which is part of the street and is alleged to have been encroached upon by the plaintiff. The report of encroachment over public land by the plaintiff, creates doubt over the claim of the plaintiff that the trees in question have been planted over the land, which is his ownership/possession. Hence, at this stage, the plaintiff has failed to setup a prima-facie case or to prove that the balance of convenience is in his favour. No relief as desired could hence be granted at this stage. The application at hand is accordingly dismissed. Nothing observed herein shall however have any effect upon outcome of instant suit upon merits.

Announced in open court.

8.12.2018.

Rajni**(Steno-II).

(Gursher Singh), PCS,
Civil Judge (Jr.Divn.),
Hoshiarpur.
UID No.PB0380.

Narinder Singh Vs. Mohinder Singh etc. (CS-1003-18)
(CNR No.PBHO020000392018)

Present:- Sh. Amit Kohli Adv. for the plaintiff.
Sh. Rajneesh Kaushal Adv. for defendant No.1 and 2.

Arguments heard. Vide my separate detailed order of today, stay application is dismissed as per terms and conditions mentioned therein. From the pleadings of parties, following issues are framed:-

- 1) Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
- 2) Whether the suit is not maintainable in the present form? OPD
- 3) Whether plaintiff has no locus standi to file present suit? OPD
- 4) Whether the plaintiff has not come to the court with clean hands and has concealed the true and material facts from this court? OPD
- 5) Whether the suit is bad for non-joinder of necessary party and mis-joinder of defendant No.1 as party? OPD
- 6) Whether the plaintiff is estopped from filing the present suit by their own acts, conducts, admissions and acquiescences? OPD
- 7) Whether the civil court has no jurisdiction to try and decide the present suit? OPD
- 8) Relief.

No other issue arises, pressed and claimed. Now to come up on 1.2.2019 for evidence of plaintiff on filing of PF/DM and list of witnesses within a week.

As per directions of Hon'ble High Court and list of advocates on penal for recording the evidence in Civil Cases, Mrs.Shobha Sharma Adv. is appointed as Local Commissioner to record the evidence in this case. Her fee is assessed of Rs.400/- per witness payable by the plaintiff. Half fee is to be paid, when affidavit is tendered and remaining fee be paid at the time of completion of

cross-examination. Civil Ahlmad is directed to remain present while recording the evidence and Local Commissioner is at liberty to give the Schedule to the parties for recording evidence. File is entrusted to Local Commissioner for recording the evidence. The file will remain in custody of Ahlmad and after completion of evidence, Local Commissioner will submit his report in brief on 1.2.2019 to the court. Ahlmad is directed to give file to the Local Commissioner, whenever it is asked for to record the evidence.

Dated: 8.12.2018.

Rajni**(Steno-II).

Next Date: 1.2.2019.

Purpose:_____.

(Gursher Singh), PCS,
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