

Paramjit Singh Vs. Satish Kumar etc.

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CIS No. CS 124-2021

CNR No. PBHOC0000143-2021

Present: Sh. Ashwani Thakur, Adv. Counsel for the plaintiff
Sh. Satish Dadwal, Adv. Counsel for the defendants

ORDER

This order of mine shall dispose of application under Order 39 Rule 1 & 2 read with Section 151 C.P.C. filed by the plaintiff.

2. Briefly the facts as narrated by the plaintiff are that the suit land is the joint ownership with possession of the plaintiff, his brothers, defendants No. 1 to 3 and other co-sharers. The land has not been partitioned by any competent court of law. It is further averred that all the defendants are doing the business of property dealers and they have purchased the suit land from one of the co-sharer namely Rajni Bala widow of Manjit Singh in the names of defendants No. 1 to 3. It is further averred that the suit land is very valuable land, situated on the main road which leads from Harse Mansar to Hajipur and the land is a commercial valuable land situated on the main road. It is further averred that the plaintiff and his family members have planted and grown number of fruit trees (Orchard) and other valuable trees in the suit land by doing hard work and by spending huge amount. The defendants keeps bad eyes on the fruit trees (Orchard) and other valuable trees planted by the plaintiff and his family members in the suit. They want to cut and remove the valuable trees of the plaintiff from the suit land by hook or by crook and for the fulfillment of their illegal motive they threatened to cut and remove the valuable trees of the plaintiff from the suit land forcibly and

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illegally and also threatened to cover the maximum front portion of the suit land forcibly by raising constriction there. It is further averred that the defendant No. 4 is neither owner nor in possession of any part of the suit land, who with connivances of defendants No. 1 to 3 threatening the plaintiff and other co-sharers to alienate or sale the specific and valuable front specific and front portion by cutting and valuable trees from it with the help of bad elements. It is well settled law that the new vendee can take the possession of the purchased land after getting the land partition by competent court of law. It is further averred that that the plaintiff has filed the partition application before the revenue court for partition the suit land and the same is pending before the revenue court. It is further averred that defendant No. 4 in connivances with defendants No. 1 to 3 and with the help of bad elements are threatening to the plaintiff to alienate or sell the maximum specific front portion more than their share and changing the nature of the suit land forcibly and illegally. They also threatened to cut and remove the valuable trees planted by the plaintiff in the suit land. Hence, the present suit as well as application.

3. Upon notice, the defendants appeared and filed the written statement and reply to the present application under Order 39 Rule 1 and 2 C.P.C. and have taken the preliminary objections that the present suit of the plaintiff is not legally maintainable; the plaintiff has no locus standi to file the present suit; the plaintiff has not come to the court with clean hands and has concealed and suppressed the material facts from the court; the plaintiff has

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no cause of action to file the present suit. **On Merits;** it is averred that Manjit Singh (deceased) had sold the property to defendant no. 1 to 3 and had put the defendants no. 1 to 3 in possession and defendants had erected four wall of the property which Manjit Singh delivered possession. It is further averred that the plaintiff has filed the present suit to harass the defendants. Plaintiff has suppressed the material fact from the court and want to grab the suit property in the garb of present suit. It is well settled law that before you seek equity, you must do equity. It is further averred that the defendant no . 1 to 3 are in possession of their respective share. It is further averred that the plaintiff is playing the delay tactics in order to delay the proceedings of partition so that he could take profit of litchi fruit and other fruits for sale for a long period of time. All other averments of the plaintiff were denied by the defendants and requested that the present application should be dismissed with costs.

4. I have heard the submissions made by the learned counsel for the parties and have gone through the judicial file as well as the documents placed on record.

5. It is the case of the plaintiff that defendants no. 1 to 3 are the subsequent vendees of the earlier co-sharer namely Rajni Bala wife of Manjit Singh and they cannot obtain the possession of the joint land except by way of partition. However, the defendants are threatening to cut and remove the trees from the suit land and are further threatening to cover specific valuable portion of the suit land more than their share. On the other hand, the

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defendants have denied all the averments of the plaintiff on the ground that they are in possession of the suit property and no injunction lies against the defendants.

6. In order to prove its case, the plaintiff has placed on record the Fard Jamabandi for the year 2014-15, Aksh Sijra, photographs of the suit land and other relevant documents. Whereas the defendants have not placed on record any document to rebut the documents of the plaintiff.

7. It is a settled principle of law that co-sharer can alienate his share whereas specific portion out of the joint land cannot be handed over by any co-sharer to his vendee. The vendee of a co-sharer has equal and efficacious remedy of getting the possession of his share by way of partition. I also draw support from the case of the law laid down by Hon'ble Punjab & Haryana High Court in the case titled as **“Ram Chander Vs. Bhim Singh” 2008 (4) Civil Court Cases 002 (P&H) (Full Bench):2008 (3) PLR 747**. The relevant portion of Para No. 18 of which is reproduced hereinafter:-

"18. It is, therefore, apparent that a co-owner has an interest in the entire property and also in every parcel of the joint land. When a co-sharer alienates his share or a part thereof in the joint holding what he brings forth for sale is what he owns i.e. a joint undivided interest in the joint property. A sale, therefore, of land from a specific khasra/killa number, forming part of a specific rectangle number, but being a part of a joint khewat, would, in view of the nature of the

right conferred upon a co-sharer, be deemed to be the sale of a share from the joint khewat and such a vendee would be deemed to be a co-owner/co-sharer in the entire joint khewat, irrespective of the artificial divisions of the joint land into different rectangles, khasra and killa numbers."

8. Further the **Hon'ble Supreme Court of India** in the case titled as **"Ramdas Vs. Sita Bai & Ors."** 2009 (4) Civil Court Cases 259 has held as under:-

"17. In view of the aforesaid position there could be no dispute with regard to the fact that an undivided share of co-sharer may be a subject matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds and amicably and through mutual settlement or by a decree of the Court."

9. Further it is the case of the plaintiff that partition petition of the joint land is already pending before the revenue Court and the defendant is threatening to cover the specific portion in order to take the advantage in the partition petition. The plaintiff has also placed on record the copy of petition pending before the Court of Tehsildar-cum-A.C. Ist Grade, Mukerian. As the equal and efficacious remedy has already been availed by the plaintiff, the defendants are required to be restrained in order to avoid irreparable loss to the plaintiff. In order to prove the existence of trees, the plaintiff has placed on record the photographs which are not rebutted by the defendant by any counter photograph. Therefore, prima facie case is made out in favour of the

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plaintiff and balance of convenience also lies towards the plaintiff.

10. In view of the discussion made above, the present application under Order 39 Rule 1 & 2 read with Section 151 C.P.C. is hereby allowed and the defendants are restrained from alienating or selling any specific front portion more than their share and are further restrained from raising construction over the suit land and are also restrained from cutting and removing any kind of tree from the suit land, till the final disposal of the present suit.

However, it is made clear that the observations made above while disposing of the application, shall have no bearing upon the merits of this case.

Announced.
Dated:04.11.2022
Upendra Singh

Manik Kaura, PCS
Civil Judge (Jr.Div.)-Mukerian
(UID No. PB0579)

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Present: Sh. Ashwani Thakur, Adv. Counsel for the plaintiff
Sh. Satish Dadwal, Adv. Counsel for the defendants

Heard. Vide my separate detailed order of even date, the application under Order 39 Rule 1 & 2 C.P.C. filed by the plaintiff stands disposed off as detailed therein. The counsels for both the parties appeared and stated that there is no chance of compromise between the parties and requested to frame issues in the present case. Therefore, there is no purpose for sending this case for any medium of ADR under Section 89 C.P.C. Therefore, from rival pleadings of the parties following issues are hereby framed:-

1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?OPP
2. Whether the suit of plaintiff is maintainable?OPP
3. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
4. Whether the plaintiff has not come to the court with clean hands and has concealed the material facts from the Court? OPD
5. Relief.

No other issue arises nor has been pressed. Onus is not disputed. Case is adjourned for evidence of the plaintiffs on filing of PF, DM and list of witnesses, if any, be filed within 15 working days otherwise no assistance of court shall be provided in procuring the presence of witnesses. Plaintiffs are further directed to supply the copies of affidavits of witnesses, intended to be examined, 10 days in advance from the date fixed to the opposite counsel so that their cross-examination may also be conducted on the date fixed i.e. 04.01.2023.

Announced.
Dated:04.11.2022
Upendra-Steno Gr.II

Manik Kaura, PCS
Civil Judge (Jr.Div.)-Mukerian
(UID No. PB0579)