

**In the Court of Sh. Prabhjot Bhatti, PCS, Civil Judge
(Jr. Division), Fazilka (UID PB0635).**

CNR No: PBZFC10006422021

CIS no. CS-336-2021

Date of Order: -25.07.2022

Next date of hearing : 26.09.2022

Darshan Singh aged 42 years S/o Baggu Singh S/o Kanda Singh R/o Village Saidoke Uttar alias Chandmari Tehsil & District Fazilka

.....Applicant(s)/Plaintiff(s)

Versus

1. Kuldeep Singh S/o Jangir Singh S/o Kanda Singh
2. Jangir Singh S/o Kanda Singh S/o Uttam Singh
3. Kulwinder Kaur W/o Kuldeep Singh S/o Jangir Singh R/o Dhani Jande Wale Jhugge Village Saidoke Hithar Tehsil & District Fazilka
4. Paramjit Singh S/o Kashmir Singh R/o Dhani Sunder Singh Village Saidoke Uttar, Tehsil & District Fazilka
5. Satnam Singh S/o Lachhman Singh
6. Santosh Rani D/o Mohinder Singh
7. Sarabjit Singh S/o Mangal Singh R/o Village Bhatian Tehsil Mamdot District Ferozepur.

.....Respondent(s)/Defendant(s)

Suit for Permanent Injunction

Application Under Order 39 Rules 1 & 2 CPC

Present: Sh. Rajinder Pal Chuchra, Advocate, for applicant/plaintiff.
Sh. Y.K. Raheja, Advocate, for respondents/defendant no. 1 to 3.
Defendants no. 4 to 7 exparte.

ORDER

1. This order of mine shall dispose of application under Order 39 Rule 1 and 2 CPC moved by applicant/plaintiff.

**Prabhjot Bhatti, PCS,
CJ/JD, Fazilka, UID: PB0635
25.07.2022**

2. Brief facts shorn of unnecessary details for the disposal of the present application are that one Bachan Singh S/o Nadar Singh was in possession of suit property as the same was transferred in his favour by Gram Panchayat of Saidoke Uttar @ Chandmari, Tehsil Fazilka vide resolution dated 05.01.1973. It is stated that plaintiff/applicant purchased possessory rights of suit property vide affidavit dated 12.11.2020 and is in possession of the suit property as per the affidavit dated 12.11.2020 executed by aforesaid Bachan Singh in his favour. It has further been stated that defendants are related to plaintiff, but are strangers regarding the suit property. It has been stated that defendants are trying to dispossess the plaintiff from the suit property to which they have no right and it is prayed that a temporary injunction order pending trial be passed in favour of plaintiff and against the defendants.
3. Upon notice to defendants, defendants no. 4 to 7 failed to appear despite due service and were proceeded against exparte. However, defendants no. 1 to 3 appeared through their counsel and filed written statement and reply to present application taking preliminary objections that suit of plaintiff is not maintainable, no cause of action, not approached court with clean hands, abuse of process of law. It has been submitted by the appearing respondents/defendants in reply on merits that suit property falls in red line of Village Saidoke Uttar @ Chandmari, Tehsil Fazilka and that respondent/defendant No. 2 in his own right is in continuous and peaceful possession over the suit

property without any hindrance or interruption. Remaining averments made by the applicant/plaintiff were specifically denied by answering respondents/defendants.

4. After considering the rival contentions of both the parties, I have minutely analyzed the record placed on file with the able assistance of counsel of both the parties.
5. It has been argued by the learned counsel for applicant/plaintiff that by way of resolution dated 05.01.1973 Bachan Singh was owner of the suit property, who has transferred the same in favour of applicant/plaintiff by executing an affidavit for valuable consideration in favour of plaintiff/applicant on 12.11.2020 and as such applicant/plaintiff is having possessory rights over the suit property and he is entitled for the relief of temporary injunction as claimed in the present case application.
6. On the other hand, learned counsel for answering defendants/respondents has argued that defendant no. 2 is in possession of suit property and relied upon photographs attached by him. He further argued that defendant no. 2 is having right over the suit property which falls in the red line of Village Saidoke Uttar @ Chandmari, Tehsil Fazilka and also that the alleged document i.e. resolution dated 05.01.1973 is not a valid document and cannot be taken into account. He further argued that its respondent/defendant No. 2 who is in possession of the suit land and prayed for dismissal of present application.

7. Heard. After having heard respective arguments of learned counsel for both the parties, this court is of the view that both the parties are laying claim over the suit property, however nothing cogent has been placed on file so as to determine as to whether which party is in possession over the suit property and as such no prima facie case can be said to be established in the given circumstances. Moreover, the contentions of applicant can only be taken into consideration after he lead cogent oral and documentary evidence in this regard. Since when plaintiff/applicant has failed to establish a prima facie case in his favour, then it is not necessary to further consider the application on the points of balance of convenience and irreparable loss/injury for the purpose of grant of temporary injunction in favour of applicant which is equitable relief in nature. As such, the present application being devoid of merits is hereby ordered to be dismissed and same stands disposed of in the terms as stated above. Be tagged.
8. It is further made clear that observations made herein above shall be exclusively for the purposes of deciding the present application and shall not be construed as opinion of this court on the merits of the main suit.

Date of Order:-25.07.2022.
'Ravi Kumar Stenographer Gr.III'

(Prabhjot Bhatti),
Civil Judge (Jr.Divn.)
Fazilka(UID No.PB0635)

Prabhjot Bhatti, PCS,
CJ/JD, Fazilka, UID: PB0635
25.07.2022

Present: Sh.Rajinder Pal, Advocate, for the applicant/plaintiff.
ShY.K. Raheja, Advocate, for respondents/defendant no. 1 to 3.
Defendants no. 4 to 7 exparte.

Arguments heard, on application filed by the plaintiff under Order 39 Rules 1 & 2 CPC. Vide separate detailed order of even date, the above said application stands disposed of, as stated therein. Both the parties were made aware of Section 89 CPC, but they refused to settle their dispute outside the Court. Accordingly, from the pleadings of the parties, the following issues are framed:

1. *Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP*
2. *Whether the plaintiff has concealed the material and patent facts from this Court? OPD*
3. *Whether the suit is not maintainable in its present form? OPD*
4. *Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD*
5. *Whether the plaintiffs are estopped by their own act and conduct? OPD*
6. *Relief*

No other issue pressed or claimed. Onus not disputed. The case is adjourned for 26.09.2022 for the evidence of the plaintiff on filing of list of witnesses, process fee and diet money within three days. Both the parties are made aware that only three opportunities shall be granted to each party to present its evidence.

Date of Order:- 25.07.2022.

'Ravi Kumar Stenographer Gr.III'

**(Prabhjot Bhatti),
Civil Judge (Jr.Divn.)
Fazilka(UID No.PB0635**

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