

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

**C.R. No. 3996 of 2010 (O&M)
Date of Decision : 30.6.2010**

Yakub & others

..... Petitioners

Versus

Jaleb Khan & others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. V.K. Bali, Advocate
for the petitioners.

VINOD K. SHARMA, J. (ORAL)

This revision petition is directed against the judgment dated 1.4.2010, passed by the learned Addl. District Judge, Fast Track Court, Nuh, on an application moved by the plaintiff / respondents under Order 39 Rules 1 & 2 read with Section 151 of the Code of Civil Procedure.

The plaintiffs brought a suit for permanent injunction restraining the defendant / petitioners from interfering in the actual, physical and cultivating possession of the plaintiff / respondents.

The case pleaded by the plaintiff / respondents was, that Sumer Khan, father of the plaintiffs was in possession of the suit land, and after his death the plaintiffs being his legal heirs stepped into his shoes. The suit land was said to be Jumla Malkan and the plaintiffs being proprietors of the Jumla Malkan were in possession of the disputed property.

The case of the plaintiffs was, that defendant / petitioners were threatening to dispossess the plaintiffs from the suit land, therefore, injunction suit was filed.

The suit was contested by the petitioners, on the grounds of maintainability, locus standi, estoppel and concealment of material facts.

The case of the defendant / petitioners was, that father of the plaintiffs Sumer Khan along with his two brothers Dhoop Khan and Hurmat were in actual, physical and continuous possession of the suit land and after their death the plaintiffs and defendants No. 1 to 7, being legal heirs, came into possession of the suit land.

In support of the case defendant / petitioners relied upon the jamabandi for the year 1963-64, in which name of Dhoop Khan and Hurmat were mentioned in the column of possession but their names were deleted from the revenue record without any order. The revenue entries in the name of plaintiffs were said to be wrong and illegal, therefore, liable to be corrected.

The learned Courts below, recorded a prima facie finding that as per the copies of jamabandis from the year 1966-67 to 2000-01, copy of khatauni paimaish of Mauja Alawalpur and copy of khasra girdawari, showed the possession of the plaintiffs whereas the sole document relied upon by the defendant / petitioners was jamabandi for the year 1963-64.

The plea of the petitioners, that subsequent entries, which were contrary to the previous jamabandis were liable to be corrected which were not as per the procedure prescribed on the plea, that the

entry in the jamabandi for the year 1963-64 was stray entry, as the name of the father of the defendant / petitioners was not mentioned in the subsequent jamabandis. The learned Courts below further held, that the entries claimed by the defendants did not co-relate with the previous entries prior to consolidation. Thus, on the basis of evidence and documents placed on record the learned Courts below prima facie came to the conclusion, that the plaintiff / respondents were said to be in possession of the suit property, therefore, held that prima facie case was proved in favour of the plaintiff / respondents and they were likely to suffer irreparable loss and injury in case injunction was not granted.

The learned counsel for the petitioners challenged the findings recorded by the learned Courts below, primarily on the plea, that once in the jamabandi for the year 1963-64 name of the defendants also appeared there was no occasion for the learned Courts below to grant injunction, as the petitioners were co-owner in possession along with the plaintiffs, therefore, the plaintiffs were not entitled to injunction.

On consideration, I find no force in the contentions raised by the learned counsel for the petitioners. The question of ownership and possession is yet to be decided by the learned Courts below after the parties are allowed to lead evidence. For the purpose of deciding application under Order 39 Rules 1 & 2 of the Code of Civil Procedure the Court was only to see whether prima facie case is in favour of the plaintiff or defendant. In the present case the jamabandis starting from the year 1966-67 onwards were in favour of

the plaintiff / respondents, so were the khasra girdawari and khatauni paimaish, therefore, the learned Courts below found that the plaintiffs were able to prove prima facie possession and granted injunction. The order does not suffer from any lack of jurisdiction or illegality which may call for interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

No merit.

Dismissed.

However, it is made clear that nothing said above would be taken as an expression of opinion on the merits of the case, as the learned Courts would record the finding after the parties are allowed to lead evidence.

30.6.2010
'sp'

(VINOD K. SHARMA)
JUDGE