



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
204

CR-1673-2022(O&M)
Date of decision: 21.07.2025

Promila Devi & Others

...Petitioner(s)

Vs.

Matu Ram & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Pankaj Nanhera, Advocate
Mr. Raghav Sharma, Advocate
for the petitioners.

Mr. Sachin Mittal, Advocate
for respondent No.1.

Mr. Rishabh Aggarwal, Advocate for
Mr. Abhinav Aggarwal, Advocate
for respondents No.2(i), (ii) and
respondents No.4(i) and (ii).

NIDHI GUPTA, J.

Present Revision Petition has been filed by the defendants no.3 to 6 under Article 227 of the Constitution of India against the impugned order dated 11.04.2022 (Annexure P1) passed by learned Additional District Judge, District Karnal, thereby allowing the application for temporary injunction filed by the respondent No.1-plaintiff under Order 39 Rule 1 and 2 CPC by allowing the appeal and reversing the finding of learned Civil Judge (Junior Division), Indri vide judgment dated 24.02.2022 (Annexure P2).



2. Brief facts of the case are that the plaintiff had filed a Civil Suit dated 19.01.2021 for possession by way of specific performance of Agreement to Sell dated 27.04.1982. Along with the said Suit, the plaintiff had filed an application under Order 39 Rule 1 and 2 CPC read with Section 151 CPC seeking interim injunction against the petitioners. Vide order dated 24.02.2022, the said application (Annexure P6) of the plaintiff was dismissed by the learned Civil Judge, Junior Division, Indri. Against the order dated 24.02.2022 the plaintiff had filed Civil Miscellaneous Appeal No.15 of 2022 (Annexure P9 colly) before the Id. Additional District Judge, Karnal. Vide the impugned order dated 11.04.2022 (Annexure P1), the said appeal of the plaintiff has been allowed by the Id. Additional District Judge, Karnal. Hence, present Revision Petition by the defendants.

3. It is inter alia submitted by learned counsel for the petitioners that the learned First Appellate Court has upset the well-reasoned judgment of the learned trial Court on the ground that possession of the suit property was found to be with the plaintiff. Ld. counsel contends that the learned First Appellate Court failed to appreciate that the possession of the suit property could not have been with the plaintiff as he was *seeking* possession of the suit property by way of the present suit. However, the learned First Appellate Court misguided itself in respect of this fact.

4. It is further submitted that even otherwise, suit of the plaintiff seeking specific performance of an Agreement to Sell dated 27.04.1982, is



not maintainable; especially in face of the fact that the petitioners are owners in possession of the suit land vide registered Sale Deed dated 04.11.2020. It is submitted that possession of the petitioners over the suit land is proven by way of comprehensive revenue record. However, all these facts have been ignored by the learned First Appellate Court in allowing the Civil Miscellaneous Appeal of the respondents. It is accordingly prayed that the impugned order be set aside.

5. Per contra, learned counsel for the respondent no.1/ plaintiff vehemently opposes the submissions made on behalf of the petitioners and submits that in the Civil Suit, the plaintiff is primarily claiming relief against the original owner of the suit property/defendant No.1/respondent No.2 herein. Learned counsel submits that one Daya Ram who was predecessor-in-interest of defendant No.1, was the owner of the suit property. The suit property was sold to the respondent for a total sale consideration of Rs.13,500/- of which the respondent had paid ₹500/- as earnest money. After entering into Agreement to Sell dated 27.04.1982 with the defendant, the said Daya Ram had expired in 1982 itself. After the death of Daya Ram, his sons had to be impleaded as legal heirs. The plaintiff had paid a sum of Rs.10,000/- to the sons of Daya Ram and therefore, only a balance sale consideration of Rs.3,000/- remained to be paid. The above-said payment of ₹10,000/- is proved from Receipt dated 25.05.1982. The Sale Deed could not be executed only due to the fact that the mutation had to be entered into



the name of the LR's of Daya Ram. It is contended that the mutation came to be entered in their name only in 2020; whereupon the present suit was filed.

6. As regards possession, it is submitted that there is a clear recital in the Agreement to Sell dated 27.04.1982 that the possession of the suit property was handed over to the plaintiff at the time of execution of Agreement to Sell itself. Thus, the First Appellate Court has categorically recorded that in view of the clear recital in the Agreement dated 27.04.1982 that possession of the suit property had been handed over to the plaintiff, the interim injunction was correctly not granted to the petitioners. Learned counsel accordingly prays for dismissal of the present Revision Petition.

7. No other argument is made on behalf of the parties.

8. I have heard learned counsel and perused the case file in detail. I find merit in the submissions made on behalf of the petitioners/defendants.

9. The facts of the case are very clear. By way of the Civil Suit dated 19.1.2021, the plaintiff is seeking decree of possession by way of specific performance of the Agreement to Sell dated 27.4.1982. First and foremost, no satisfactory explanation has been given by the plaintiff as to why the Civil Suit was filed almost after 40 years of the Agreement. It may also be pointed out that in the suit property is not identifiable from the contents of the said Agreement dated 27.4.1982 as neither the exact area of the land nor any description of the land i.e., khewat, khasra and khatoni numbers is



mentioned. Respondents even failed to give the correct boundaries and directions of the alleged suit property.

10. Be that as it may, case of the plaintiff is primarily based on the recital contained in the Agreement to the effect that at time of execution of the said Agreement, possession of the suit property was handed over to the plaintiff. It is solely on the basis of this recital, that the learned 1st Appellate Court assumed possession of the suit property to be with the plaintiff. Accordingly, the reasoning on which the Id. First Appellate Court has reversed the judgment of the learned trial Court is in Para 24 of the impugned order, which reads as follows: -

“24. Since plaintiffs have been able to prove themselves prima facie to be in cultivating possession of the suit land, thus, balance of convenience lies in their favour and if defendants No.4 to 6 are not restrained from alienating the suit land further, then plaintiffs would suffer an irreparable loss and injury which will not be compensated in terms of money and would invite unnecessary litigation but the impugned order was passed without considering the aforesaid facts in mind, thus, impugned order is not liable to sustain and is hereby set aside.”

11. However, in this regard the learned 1st Appellate Court has committed grave error in failing to appreciate that as per the revenue record available on the file possession of the suit property is not with the plaintiff. The mutation no. 261, Jamabandi 1968-69, 1973-74, 1978-79, 1983-84 (Annexure P-11), 1988-89, 1993-94, 1998-99, 2003-04, 2008-09, and 2018-



19 (Annexure P-12) prove that since 1980 the ownership and possession of the suit property up till 2020 is with the Dayaram (Since deceased). However, the first Appellate Court has wrongly observed the same to be stray entries even though the said entries are continuous for more than 40 years in favour of Dayaram (Since deceased). Further the version of delivery of possession in 1982 to the plaintiff is falsified from the fact that the suit property as per the revenue record is on lease for 30 years from 1963 to 1993 in favour of Sh. Prem Chand S/o Sh. Manak Chand as per all the Jamabandis attached on case filed from 1963 to 1993. Hence, there is not an iota of evidence to show the transfer of possession in favor of the plaintiffs. Thus, a prima facie case is established in favour of the petitioners.

12. On the other hand, the petitioners have come to be owners in possession of the suit property by way of registered Sale Deed No.2118 dated 04.11.2020; whereafter mutation Nos.2964 and 2970 (Annexure P13 and P14) have also been registered in the name of the petitioners. The learned 1st Appellate Court again failed to appreciate that the possession of vendors of the petitioners and later on the possession of petitioners is proved from Mutation no. 2964 (Annexure P-13) by way succession through Will; and later to the petitioners vide Mutation no. 2970 (Annexure P-14) vide Sale Deed no.2118 dt. 04.11.2020. Jamabandi dated 12.11.2020 (Annexure P-14), is in lieu sale deed dated 04.11.2020. The Petitioners are the bonafide purchasers of suit property and have a registered sale deed



and mutation in their name which have a substantive evidentiary value in comparison to an inadmissible 40-year-old Agreement to sell dated 27.04.1982. Further, the Ld. Appellate Court has lost sight of the factual and legal defect in the main suit that despite the knowledge of mutation no. 2694 on the basis of Will dt. 14.04.1981, the same is not assailed or challenged in the present suit; and without the same, the relief of specific performance of contract in the main suit cannot be granted. Thus, balance of convenience is also in favour of the petitioners.

13. Further, it is but trite that if possession had been handed over to the plaintiffs on 27.04.1982 itself, then what led them to file the present Suit for possession? However, despite repeated Court query in this regard Id. counsel for the plaintiffs has no reply. Even no information is forthcoming as to on what date was possession taken from him by the defendants. Therefore, no irreparable loss or injury will be caused to the plaintiff.

14. The following findings recorded by the learned trial Court in its order dated 24.02.2022 are relevant: -

“12. Apparently, the plaintiffs have come to the Court to seek their relief after almost 40 years. During course of arguments, learned counsel for the plaintiffs states that the plaintiffs are in possession of suit property, although in the relief as sought by them in the prayer clause is specifically of possession as owners by way of specific performance along with other reliefs. Further, it would not be appropriate to mention here that, in this case complex questions are involved which have to be adjudicated only after both the parties have adduced their evidence. In the opinion of the Court, the right of the defendants particularly



Sumer Chand, Mitter Sen and Sushil Kumar to execute the agreement to sell is also questionable since the defendants have raised the contention that deceased Daya Ram had also executed a Will regarding the suit property in favour of his son Mitter Sen with 1/3rd share, his grandsons Satish Kumar Garg and Rajesh Kumar Garg sons of Sumer Chand with 1/3rd share and further his grandsons namely Rajnesh Garg and Deepak Garg sons of Sushil Kumar with 1/3rd share.

13. Apart from the above, the plaintiffs have also not placed on record any document to show their possession over the suit property as alleged or that they were in possession of the suit property at any point of time. The above said questions remained the matter of evidence and have to be decided on merits at the conclusion of trial. Hence, in the opinion of the Court, no prima facie, balance of convenience lies in favour of the plaintiffs and plaintiffs would not suffer irreparable loss as their interest is fully protected by the doctrine of lis pendence which would operate in case of any alienation of suit property.”

15. In view of the above, present petition is **allowed**. The impugned order dated 11.4.2022 passed by the learned ADJ is set aside and the judgement dated 24.02.2022 (Annexure P-2) of the learned Civil Judge is restored.

16. Pending application(s) if any also stand(s) disposed of.

21.07.2025
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No