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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CR-39-2025 (O&M)
Date of decision:09.01.2025

Suresh Kumar

... Petitioner

Vs.

Mahender Singh

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Vikram Singh, Advocate for the petitioner.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed for setting aside the order dated 05.12.2024 (Annexure P-5) passed by the Additional District Judge, Rohtak vide which order dated 27.10.2023 (Annexure P-3) passed by the Civil Judge (JD), Rohtak has been set aside and application under Order 39 Rules 1 and 2 read with Section 151 CPC was allowed.

2. The brief facts relevant for the purpose of adjudication of the present revision petition are that the respondents/plaintiff filed a suit seeking relief of injunction alleging that he was co-sharer of agricultural land as detailed in para 1 of the plaint. Hari Om and others including present defendant filed case No.27NT/Partition on 15.04.2009 for partition of said agricultural land against Smt. Shakuntla and others including the present plaintiff and other co-sharers. Partition proceedings were decided by the Assistant Collector II Grade-cum-Tehsildar, Rohtak vide order dated

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31.01.2023 and *Sanad Taksim* was accordingly approved. Plaintiff was allotted Khasra/Killa No.21/21/2(0-4), 26/1 (7-12), 2 (7-11), 8/2/1(6-4), 63/7/1 (7-4), 8/2 (4-13) total land measuring 33 kanal 8 marlas in the aforesaid partition proceedings and none of the parties to the said proceedings filed any appeal against the said partition proceedings. Actual physical possession of respective khasra/killas numbers was allotted to them in the partition proceedings on 23.06.2023 and rapat No.408 regarding *kabza karyawahi* was entered in the rapat roznamacha by the Halqa Patwari. Mutation of aforesaid partition proceedings was also entered on 30.06.2023 vide mutation No.3847 which was sanctioned by AC II Grade, Rohtak on 05.07.2023. It has been alleged that defendant has evil eyes on the agricultural land of the plaintiff and by taking undue advantage of the fact that the agricultural land is an open tract of land and is neither bounded nor secured in any other manner, defendant attempted to take possession of khasra/killas No.26/1 and had planted rice crop on some part in the absence of the plaintiff. Then defendant apologized and made the excuse that he had planted rice crop in some part of khasra No.26/1 thinking it to be khasra/killas No.25 and matter was not proceeded further. It is alleged that defendant has still evil eyes on the agricultural land allotted to the plaintiff in above mentioned partition proceedings and he can destroy the crops of the plaintiff at any time and can also make effort to forcibly occupy the land of the plaintiff.

3. Notice of the said suit was issued to the defendant/respondent, who appeared and filed written statement alleging that partition proceedings



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have not been finalized as yet and revision against order dated 31.01.2023 is pending before the Commissioner, Rohtak Division. Petitioner has purchased land of killa No.26/1 vide sale deed No.1505 dated 05.06.2001 and since then he is in physical possession and laid pipe line and spent Rs.4,00,000/- thereon. It was also alleged that revision against *Sanad Taksim* was pending and it had been passed without providing any opportunity of hearing to the parties.

4. Along with the suit, an application under Order 39 Rules 1 and 2 CPC was also filed by the plaintiff for restraining the defendants from interfering in his possession over killa No.26/1. Vide order dated 27.10.2023 of the learned trial Court, both the parties were directed to maintain status quo regarding killa No.26/1 till final decision of the case. Thereafter, respondent/plaintiff filed an appeal challenging order dated 27.10.2023 before learned Additional District Judge, Rohtak and vide order dated 05.12.2024, the appeal as well as application for stay filed by the respondent/plaintiff was allowed and the order dated 27.10.2023 was set aside. Petitioner/defendant was restrained from interfering in peaceful possession of the respondent/plaintiff over the suit property till final disposal of the suit except in due course of law. Aggrieved against the said order, present revision petition has been filed by the petitioner/defendant.

6. Learned counsel for the petitioner has contended that the impugned order is wrong and illegal as it has been proved on record that physical possession of killa No.26/1 has not been delivered to the plaintiff/respondent. Local Commissioner, who visited the spot after spot inspection

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submitted the report that petitioner/defendant is in physical possession over the suit property and has sown the rice crop over land bearing khasra No.26/1 and trial Court had rightly passed order dated 27.10.2023 directing the parties to maintain status quo till final decision of the case. He has further contended that challenge to order dated 27.10.2023 by the plaintiff/respondent is itself sufficient to prove that he is not in possession over khasra No.26/1. The First Appellate Court while passing the impugned order has failed to appreciate the fact that while deciding the application for temporary injunction, the Court is not required to go into the merits of the case in detail and only prima facie case, balance of convenience and irreparable loss is to be considered while granting the relief. He has urged that learned Additional District Judge has failed to appreciate the law and material facts of the case which unfolds otherwise. Petitioner is owner in possession over the land in dispute since 2001 and till date the physical possession has not been taken from him and it is well settled law that partition should be done by keeping the possession intact and respondent/plaintiff got the partition ex-parte without giving any opportunity of hearing to the petitioner/defendant which is liable to be set aside and has prayed that present revision petition be accepted and impugned order be set aside.

7. I have heard learned counsel for the petitioner at length and have gone through the relevant record.

8. It emerges from the record that defendant alongwith other co-sharers had filed partition proceedings before AC II Grade, Rohtak, which have already culminated in preparation of *Sanad Taksim* vide judgment

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dated 31.01.2023 passed by the competent revenue Court. Plaintiff was allotted khasra/killa Nos.21//21/2(0-4), 26//1 (7-12), 2(7-11), 8/2/1 (6-04), 63/7/1 (7-4), 8/2(4-13) and defendant was allotted khasra/killa Nos.22//24/3 (0-4), 25(7-4). It was also implemented in the revenue record and physical possession of khasra/killa numbers allotted to the various co-sharers in the said partition proceedings was given to respective co-sharers including the plaintiff and defendant by the revenue authorities on 23.06.2023. Vide order dated 20.03.2024, the petition filed by the defendant/petitioner before Commissioner, Rohtak against the order of partition passed by AC II Grade, Rohtak has already been dismissed. The Appellate Court has rightly observed that when the revenue authorities have already partitioned the suit land and khasra/killa No.26/1 has fallen to the share of plaintiff and *Sanad Taksim* has already been prepared reflecting handing over the physical possession of khasra/killa No.26/1 to the plaintiff then defendant cannot interfere in his possession as the partition proceedings stands culminated and specific possession of specific killa numbers have been handed over to the co-sharers, naksha A, B have also been prepared and rapat dated 30.06.2023 has been incorporated in the revenue record and mutation of partition proceedings has been entered and sanctioned. It has further been rightly observed that when the partition proceedings have finally separated, the joint possession of co-shares and possession of specific killa No.26/1 has been handed over to the plaintiff as per the documents filed on record, then a prima facie case is made out in favour of plaintiff/respondent and balance of convenience also lies in his favour and he will suffer irreparable loss if no

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injunction is granted in his favour. Therefore, order dated 27.10.2023 was rightly set aside by holding that plaintiff cannot be restrained from enjoying possession of killa No.26/1 which has fallen to his share, while granting status quo order. Petitioner/defendant has been rightly restrained from interfering in the peaceful possession of respondent/plaintiff over the suit property till final disposal of the suit except in due course of law.

11. Thus, there being no illegality or infirmity in the impugned order, no interference therewith is called for while exercising the revisional jurisdiction.

12. The present revision petition being bereft of any merits, stands dismissed.

13. Pending application(s), if any, shall also stand disposed of.

**(SUKHVINDER KAUR)
JUDGE**

09.01.2025*harjeet*

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |