

CPC O. 39 R. 1 and 2 - Injunction restraining the petitioner from interfering with the respondent's possession upheld. Petitioner's claim of purchasing a share from a co-sharer rejected due to lack of evidence of possession by the co-sharer or the petitioner. Undivided shares can be sold but possession requires partition by metes and bounds. Injunction properly granted; petition dismissed. [ID 213901]

2016 PLRonline 0120PH

[ID 213901]

Amarjit Kaur v. Bikram Singh

PUNJAB AND HARYANA HIGH COURT

Before:- Darshan Singh, J.

Amarjit Kaur - Petitioner

Versus

Bikram Singh & Anr. - Respondents

Civil [revision](#) No. 2402 of 2016. D/d. 4.4.2016.

Civil Procedure Code, 1908 - Order 39 Rules 1 and 2 - [injunction](#) Against Co-sharer - Injunction granted restraining petitioner from interfering with respondent's possession - Contention that petitioner, having purchased a share from a co-sharer, cannot be restrained by injunction, rejected - No [evidence](#) on record to establish that the co-sharer who sold the share to the petitioner was in possession of the property - Undivided share of a co-sharer may be subject to sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds, either amicably or through a court decree - Petitioner failed to establish exclusive possession of the disputed property - Vendor's possession also not proved - Injunction rightly granted - Petition dismissed.

Cases Referred :-

Ramdas v. Sitabai 2009(4) Civil Court Cases 259.

M/s. Orient Craft Infrastructure Ltd. v. Smt. Subhadra, (2010-4)160 PLR 643.

For the Petitioner :- A.S. Kalra, [advocate](#).

JUDGMENT

Darshan Singh, J. - The present revision petition has been preferred against the order dated 10.09.2015 passed by the learned Additional Civil Judge (Junior Division), Batala whereby the application filed by plaintiff respondent No. 1 Bikramjit Singh for ad interim injunction under Order 39 Rules 1 & 2 of the Code of Civil Procedure, 1908 (hereinafter called the 'CPC') has been allowed and the order dated 10.12.2015 passed by the learned Appellate Court, whereby the aforesaid order has been affirmed.

2. Plaintiff-respondent No. 1 filed the suit for permanent injunction on the grounds inter alia that he along with the other legal heirs of Ajaib Singh is in actual physical cultivating possession of the land in dispute as co-sharers; that defendants have no right, title or [interest](#) in the suit land; and that they never came in possession thereof. They have threatened to interfere in the peaceful, exclusive and cultivating possession of the plaintiff-respondent No. 1 illegally and forcibly. Hence, the suit along with application for ad interim injunction.

3. The petitioner-defendant No. 2 along with defendant No. 1 contested the suit on the plea that the plaintiff never came in possession of the suit property in any manner as alleged by him; that petitioner defendant No. 2 has purchased the suit land from Sulakhan Singh and since then, she is in actual physical and continuous cultivating exclusive possession over the suit land. The Khasra Girdawari entries are also in her favour. With these pleas, prayer for dismissal of the application for ad interim injunction was made.

4. I have heard learned counsel for the parties and gone through the paper-book carefully.

5. Learned counsel for the petitioner-defendant No. 2 contended that petitioner-defendant No. 2 purchased the share of Sulakhan Singh. He delivered the peaceful and exclusive cultivating possession of the suit land to the petitioner. She applied for correction of Khasra Girdawari entries. Her application was allowed vide order dated 19.08.2014. The appeal against that order was allowed

CPC O. 39 R. 1 and 2 - Injunction restraining the petitioner from interfering with the respondent's possession upheld. Petitioner's claim of purchasing a share from a co-sharer rejected due to lack of evidence of possession by the co-sharer or the petitioner. Undivided shares can be sold but possession requires partition by metes

and bounds. Injunction properly granted, petition dismissed. [ID: 213901]
 by the Collector. But in the revision, the parties have been ordered to maintain status quo. He contended that the petitioner is in possession of the suit property as she has purchased the share of Sulakhan Singh co-sharer. No injunction can be issued against a co-sharer. Thus, he contended that the impugned orders are erroneous.

6. I have duly considered the aforesaid contentions.

7. This fact is not disputed that in the Jamabandi for the years 2008-09, the plaintiff has been shown to be in exclusive cultivating possession of the suit land measuring 06 Kanals 16 Marlas comprised in Khasra No. 85R/23. The petitioner-defendant No. 2 is claiming to be in possession of the suit property on the ground that she has purchased the share of Sulakhan Singh son of Ajaib Singh. She has purchased the land measuring 02 Kanals 05 Marlas out of the total property measuring 258 Kanals 04 Marlas. She has only purchased the share of her vendor out of the big chunk measuring 258 Kanals 4 Marlas. So, no specific Killa number has been purchased by her. There is nothing on record to show that any specific Tatima has been carved out on the basis of sale deed in favour of the petitioner. The learned first Appellate Court has specifically observed that there is nothing on record to show that Sulakhan Singh was in possession of the property which he sold to the petitioner. The Hon'ble Supreme Court in case Ramdas v. Sitabai and others 2009(4) Civil Court Cases 259 has held that the 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 amicably through mutual [settlement](#) or by a decree of court. Same ratio of law has been laid down by this Court in case M/s Orient Craft Infrastructure Ltd. v. Smt. Subhadra and others (2010-4)160 PLR 643,.

8. This fact is not disputed that the appeal filed by the respondent against the order correcting the Khasra Girdawari in favour of the petitioner was allowed by the Collector and now the revision is pending against that order, so the petitioner cannot take any benefit of the order correcting the Khasra Girdawari by the Assistant Collector as the said order was already reversed in appeal and revision before the Commissioner is still pending. Thus, petitioner has not been prima facie able to show that she came in exclusive possession of the property in dispute. Even her vendor is not proved to be in possession thereof.

9. Thus, I do not find any illegality in the concurrent [findings](#) recorded by the learned courts below.

10. Consequently, the present petition, having no merits, is hereby dismissed.

Tags: [Amarjit Kaur](#), [Bikram Singh](#), [Co-sharer](#), [CPC O. 39](#), [CPC O. 39 R. 1](#), [Injunction](#), [Justice Darshan Singh](#), [Partition](#)