
(2000) 02 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3631 of 1999

Birbal	Vs	APPELLANT
Shankar Dev		RESPONDENT

Date of Decision : 24-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2001) 3 RCR(Civil) 314

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : Mr. N.D. Achint, for the Appellant; Mr. L.N. Verma and Mr. A.K. Singhal, for the Respondent

Judgement

V.M. Jain, J.—This is a revision petition against the judgment dated 2.6.1999 passed by learned Additional District Judge, allowing the appeal of the defendants and refusing to grant injunction in favour of the Plaintiff.

2. The facts which are necessary for the disposal of the present revision petition are that Birbal plaintiff filed a suit for permanent injunction restraining the defendants from interfering into the possessory rights of the plaintiff in respect of the suit land as a tenant on payment of 1 ""3rd Batai wider the landlords. Along with the suit the plaintiff also filed an application under Order 39 Rules 1 and 2 read with Section 151 CPC, for the grant of ad interim injunction, The suit and the application were contested by the defendants. The trial Court after hearing both sides vide order dated 20.2.1998, restrained the defendants from interfering into the possession of the plaintiff over the suit land except the land comprised in Square No. 234 and the plaintiff was also restrained from interfering into the possession of defendant No. 1 in respect of suit land comprised in Square No. 234 till the final disposal of the suit. Aggrieved against the said order of the trial Court two appeals were filed, one by the plaintiff and the other by the defendants. Both the appeals were decided together by the learned Additional District Judge vide judgment dated 2.6.1999. The appeal filed

by Birbal plaintiff was dismissed while the appeal filed by the defendants was allowed and it was held that the stay order would not be operative in respect of land covered by Square No, 233 which was in possession of Ram Kumar and Amar Singh who were not parties to the suit. Aggrieved against the said judgment, Birbal plaintiff has filed the present revision petition.

3. Notice of motion was issued. Counsel for the parties have been heard.

4. Learned counsel appearing for the petitioner submitted before me that as per Nehri Girdawaris, the plaintiff was in possession of the suit property and as such, the Additional District Judge should not have accepted the appeal and should have upheld the order of the trial Court granting injunction in favour of the plaintiff. It was submitted that there was absolutely no reason to prefer entries in the revenue record over and above the entries in the Nehri Girdawaris. On the other hand, learned Counsel appearing for the defendant-respondents submitted before me that Jamabandi and Khasra Girdawaris have to be given preference over Nehri Girdawaris. It was further submitted that there was no reason to interfere with the judicial discretion exercised by the learned Additional District Judge.

5. After hearing both sides and after perusing the record, I find no merit in the present revision petition. The learned trial Court while granting the ad interim injunction in favour of the plaintiff in respect of the land (other than Square No. 234) had merely referred to the copies of the Nehri Girdawaris relied upon by the plaintiff and copies of the Khasra Girdawaris relied upon by the defendants and without assigning any reason had granted ad interim injunction in favour of the plaintiff for the land other than the land comprised in Square No. 234. However, when the matter came up for hearing before the learned Additional District Judge, he took into consideration various documents available on record and found that while the plaintiff had relied upon Nehri Girdawaris, the defendants had placed reliance upon the revenue record. It was also found by him that Nehri Girdawaris could be taken into consideration while determining the possession only when no revenue record is coming forth the contrary. It was further observed that Nehri Girdawaris cannot override the revenue record. He also found that in the present case Girdawaris prepared by the revenue authorities in respect of the land in dispute were on the file which show that Rai Singh defendant was in possession of a part of the land in dispute from Kharif 1995 to Rabi 1997. It was also found that as per Jamabandi for the year 1982-83 Rai Singh was recorded to be in possession of the land measuring 19 Kanal 6 Marias and similar was the position with regard to Jamabandi for the year 1992-93. It was also found that mutation No- 4223 sanctioned on 10.11.1997, change of ownership on account of sate was recorded from the name of Rai Singh 10 the name ofShanker Dev respondent in respect of land measuring 19 Kanals 6 Marias. He also took into consideration Jamabandi for the year 1977-78 wherein Rai" Singh was recorded to be owner in possession of part of the suit land including Ram Kumar while Ama; Singh was recorded as Gair Marusi tenant

through Bir-bal co-sharer on the part of the land comprised in, Square No. 233. As per said Jamabandi Amar Singh was in possession of the land and not Birbal. The land comprised in Square No. 234 was previously in pos-I session of Mathri as co-sharer and she had sold the same to Rai Singh defendant No. 3. Taking into consideration the entries in the revenue record, the learned; Additional District Judge found that only names of Rai Singh. Amar Singh and Ram Kumar figure in the revenue record in the column of possession and out of them, Amar Singh and Ram Kumar are not parties to the suit while Shanker Dev had come into possession on account of purchase of land measuring 19 Kanals 6 Marias which was recorded in the ownership and possession of Rai Singh since 1977-78. It was also noticed that Birbal plaintiff had sold that land including the land of Sq. No. 173 of which Mathri was the co-sharer, as her Mukhtiar vide sale deed dated 24.12.1975 and the said land was recorded in possession of Rai Singh having purchased from Mathri. Taking all these facts into consideration, the learned Additional District Judge found that the claim of Birbal plaintiff on the basis of Nehri Girdawaris was inconsistent with the entries in the revenue record and as such Nehri Girdawaris could not over- ride the revenue record.

6. I find no illegality or infirmity in the judgment dated 2.6.1999 passed by the Additional District Judge while refusing to grant injunction in favour of the plaintiff. It may also be mentioned here that as per Nehri Girdawaris, Birbal plaintiff was recorded to be owner in possession of the suit land. However, it is not even the case of the plaintiff that he was the owner of the suit land, He was only claiming his possession over the suit land. Under these circumstances, no reliance whatsoever could be placed on Nehri Girdawaris and the learned Additional District Judge had rightly ignored the same and had rightly refused to prefer Nehri Girdawaris over and above the revenue record.

7. In view of my detailed discussion above, finding no merit in the present revision petition, the same is hereby dismissed with no order as to costs. However, nothing stated above shall be taken as an expression on the merits of the case.

8. Petition dismissed