

(2012) 08 P&H CK 0230
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 5584 of 2011

Parduman Singh	Vs	APPELLANT
Shri Gurdwara Neem Sahab Patshahi Nauvi		RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 168 PLR 321

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Arun Jain, with Mr. Sham Lal Bhalla, for the Appellant; Kanwaljit Singh with Mr. Puneet Kumar Bansal, for the Respondent

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Defendant Parduman Singh has filed this revision petition under Article 227 of the Constitution of India to challenge orders of both the courts below thereby granting temporary injunction to respondent-plaintiff Shri Gurdwara Neem Sahab Patshahi Nauvi, Dogra Gate, Kaithal. Respondent-plaintiff has filed suit against defendant-petitioner for permanent injunction alleging that defendant's father Jagmohan Singh gifted suit land measuring 41 kanals 6 marlas to the plaintiff vide registered gift deed dated 27.7.1995 and since then the plaintiff is owner in possession of the suit land but the defendant threatened to dispossess the plaintiff therefrom forcibly. Plaintiff sought permanent injunction restraining the defendant from doing so. Temporary injunction to the same effect during pendency of the suit was claimed by moving separate application.

2. Defendant resisted the suit and the application and pleaded that he is owner in possession of the suit land. Defendant alleged that his father had executed registered Will dated 6.12.1995 in favour of the defendant regarding his entire property including the suit land and after the death of Jagmohan Singh, defendant is owner in possession of the suit land. Defendant has also filed

separate suit to challenge the gift deed, set up by the plaintiff, being based on fraud etc. Various other pleas were also raised.

3. Learned Additional Civil Judge (Senior Division), Kaithal vide order dated 1.5.2010, Annexure P/8 allowed plaintiff's application for temporary injunction and thereby restrained the defendant from interfering in possession of the plaintiff over the suit land till disposal of the suit. Appeal against the said order preferred by the defendant has been dismissed by learned Additional District Judge, Kaithal vide order dated 17.5.2011, Annexure P/9. Feeling still aggrieved, the defendant has filed this revision petition to challenge orders Annexures P/8 and P/9 passed by the courts below.

4. I have heard learned senior counsel for both the parties and perused the case file.

5. Counsel for the petitioner contended that in Nehri girdawari, the defendant-petitioner is recorded to be in possession of the suit land. It was also submitted that in view of registered Will executed by defendant's father in favour of defendant, the latter has become owner in possession of the suit land along with other land. It was also pointed out that electricity bills of the tubewell installed in the said land are also in possession of the defendant and are being paid by him. Reference was also made to affidavit Annexure P/11 furnished by one Devinder Singh affirming that he or his son never took the suit land on lease from the plaintiff.

6. On the other hand, learned counsel for the respondent-plaintiff contended that mutation of registered gift deed dated 27.7.1995 was sanctioned in favour of the plaintiff and since thereafter the plaintiff is recorded to be owner in possession of the suit land in the revenue record i.e. jamabandies and khasra girdawaries and therefore, temporary injunction has been rightly granted in favour of the plaintiff. It was pointed out that plaintiff Gurdwara has been leasing out the suit land by auction every year to different persons and there is record of the plaintiff to this effect.

7. I have carefully considered the aforesaid contentions. Suit by defendant to challenge the gift deed dated 27.7.1995 was allegedly filed on 29.4.2010 i.e. on next day of the filing of the instant suit by the plaintiff. The defendant thus did not challenge the said gift deed for almost 15 years. Defendant's father who is said to have died in the year 1996 also did not challenge the gift deed during his life time. Mutation of the gift deed had been sanctioned in favour of the plaintiff and revenue entries thereafter reflected ownership and possession of the plaintiff over the suit land. The defendant, therefore, could not be oblivious of the said entries based on the gift deed. In spite thereof, the gift deed was not challenged for almost 15 years. Even otherwise, prima facie there is nothing on record to suspect the said gift deed which is registered document. Registration of the deed further adds to its authenticity. In view of said gift deed, defendant's father was not owner of the suit land at the time of his death and, therefore, the defendant

could not inherit the suit land from his father under the alleged Will.

8. Claim of the defendant based on Nehri girdawari Annexure P/7 regarding his possession over the suit land cannot be accepted at this stage. At the outset, it may be mentioned that even Nehri girdawari does not pertain to entire suit land but pertains to some different parts thereof for different crops. Even otherwise, entries in jamabandies and khasra girdawaries, which is revenue record, would prevail over entries in Nehri girdawari, particularly for the purpose of determining prima facie possession of either party. Moreover, entries in Jamabandi carry presumption of correctness which cannot be said to be rebutted by Nehri Girdawari.

9. Electricity bills relied on by defendant-petitioner do not help him in any manner because there is nothing on record to depict that the tubewell in question exits in the suit land. On the contrary, admittedly the defendant has other land measuring about 80 kanals and the electricity bills could be of the tubewell existing in the said other land.

10. Affidavit dated 6.7.2012, Annexure P/11 furnished by Devinder Singh (apparently for the purpose of this revision) also does not carry any weight at this stage because even if the defendant or his son had earlier taken the suit land on lease from the plaintiff, even then said affidavit could be furnished by Devinder Singh. Its veracity can be tested only on cross-examination of the deponent.

11. Prima facie there is nothing on record to depict that defendant-petitioner is in possession of the suit land. On the contrary, there is overwhelming material on record to depict that plaintiff-respondent is prima facie in possession of the suit land. Consequently, temporary injunction has been rightly granted to the plaintiff by both the courts below. Discretion exercised by the courts below in this regard does not suffer from any perversity, illegality or jurisdictional error. All the ingredients for grant of temporary injunction are fully made out in favour of the plaintiff and no other order could reasonably be passed on the basis of material on record. Impugned orders of the courts below are fully justified by the material on record and there is no ground to interfere with the same. As a necessary corollary, I find no merit in this revision petition which is accordingly dismissed. However, nothing observed herein before shall be construed as an expression of opinion on merits of the suit.