

(2013) 09 P&H CK 0399

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 6532 of 2011 (O and M)

Dera Talab Wala Sadh Udasian

APPELLANT

Vs

Amar Singh and Others

RESPONDENT

Date of Decision: Sept. 4, 2013

Acts Referred:

- Constitution of India, 1950 - Article 227

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

Bench: Single Bench

Advocate: Jai Bhagwan, for the Appellant; V.G. Johar, Advocate and Mr. Lalit Sharma, Advocates for Respondents Nos. 1 to 4, for the Respondent

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

In this revision petition filed under Article 227 of the Constitution of India by plaintiff-Dera Talab Wala Sadh Udasian, challenge is to judgment dated 12.05.2011 Annexure P-7 passed by the lower appellate Court. Plaintiff-petitioner has filed suit alleging that it is owner in possession of 20 bighas 8 biswas land (suit land) having been gifted to it by cosharer Naraina vide gift deed dated 25.03.1964 and therefore, defendants have no right to interfere in possession of the plaintiff over the suit land. Plaintiff sought temporary injunction restraining the defendants from interfering in possession of the plaintiff over the suit land during pendency of the suit.

2. Defendants no. 1 to 4 only contested the suit and the application for temporary injunction and pleaded that they are cosharers in exclusive possession of the suit land and other joint land. Locus standi of alleged Managing Committee of plaintiff-Dera to file the suit was also challenged.

3. Trial Court vide order dated 08.03.2011 Annexure P-6 allowed the plaintiff's application for temporary injunction. However, appeal against the said order preferred by defendant no. 1 to 4 has been allowed by learned Additional District

Judge vide impugned judgment dated 12.05.2011 Annexure P-7 and thereby the application of plaintiff for temporary injunction stands dismissed. Feeling aggrieved, plaintiff has filed this revision petition to challenge judgment Annexure P-7 passed by the lower Appellate Court.

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

5. Counsel for the petitioner contended that plaintiff-petitioner is in possession of the suit land and is, therefore, entitled to temporary injunction. On the other hand, counsel for contesting respondents no. 1 to 4 contended that respondents no. 1 to 4 are in possession of the suit land and therefore temporary injunction has been rightly declined to the plaintiff by the lower appellate Court.

6. I have carefully considered the matter. Perusal of jamabandi Annexure P-2 for 1963-64 reveals that possession over the suit land is recorded to be of Mukhtiar Singh father of defendants no. 1 and 2 as gair morusi under the plaintiff-Dera. Perusal of impugned judgment also reveals that even in subsequent jamabandis, actual possession of plaintiff has not been recorded and rather possession of contesting defendants or their predecessors has been recorded who have also become cosharers in the suit land and other joint land having purchased it from Sadhu cosharer.

7. Accordingly, plaintiff is prima facie not proved to be in possession of the suit land and, therefore, the plaintiff is not entitled to temporary injunction asked for. There is no perversity, illegality or jurisdictional error in the impugned judgment of lower appellate Court so as to call for interference by this Court in exercise of power of superintendence under Article 227 of the Constitution of India. The revision petition is devoid of substance and is accordingly dismissed.

8. However, nothing observed hereinbefore shall be construed as expression of opinion on merits of the suit. Pending civil miscellaneous application, if any, is disposed of as infructuous.