

**(2014) 07 P&H CK 0766**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CR No. 4416 of 2014 (O&M)

Heera Singh

APPELLANT

Vs

Navraj Singh

RESPONDENT

**Date of Decision:** July 10, 2014

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151
- Penal Code, 1860 (IPC) - Section 420, 468, 471

**Hon'ble Judges:** Bharat Bhushan Parsoon, J

**Bench:** Single Bench

**Advocate:** Beant Singh Seemar, Advocate for the Appellant

**Final Decision:** Dismissed

**Judgement**

Dr. Bharat Bhushan Parsoon, J.

Claiming himself to be a tenant, a suit seeking a decree for permanent injunction against the defendants from interference in his possession, is pending adjudication in the lower Court, wherein an application moved under Order XXXIX Rules 1 & 2 read with Section 151 CPC seeking temporary injunction during pendency of the suit, has been decided concurrently by both the Courts below against the petitioner-plaintiff who has now invoked supervisory jurisdiction of this Court u/s 227 of the Constitution of India for setting aside order dated 7.11.2013 passed by the lower Court and order dated 16.5.2014 passed by the lower Appellate Court.

2. In this revision petition, it is claimed that once the petitioner is in possession, he cannot be dispossessed except in due course of law. It is further averred that both the Courts below have erred in ignoring his possession and have failed to provide him protection in law of non interference in his possession.

3. Hearing has been provided.

4. The petitioner-plaintiff had approached the Civil Court seeking protection of his possession with a definite stand that he is a tenant on the land having been inducted by Surjit Singh, father of the defendant No. 1, in the year 1984. It is claimed that he has been regularly paying rent of the suit land in the form of 1/4th share of the produce to the defendant No. 1.

5. Perusal of the impugned orders with record and material on the paper-book reveals that claim of the plaintiff is neither sustained nor supported by any material. It is also evident that petitioner-plaintiff and non-applicant/defendant No. 1 are in collusion with each other. To defeat the claim of the non-applicant/defendant No. 2, non-applicant/defendant No. 1 had clearly sided with the plaintiff.

6. It would be relevant further to mention that Surjit Singh, father of non-applicant/defendant No. 1 had entered into an agreement with defendant No. 2 for selling of paddy but he neither returned the paddy nor rice and misappropriated the entire stock of paddy resulting in passing of an Award by the Arbitrator against him on 13.11.1983. The said Award having been made rule of the Court is pending execution wherein property of JD Surjit Singh was attached and was put to auction. In public auction, defendant No. 2 had become auction purchaser and sale certificate was issued in his favour on 12.1.2004.

7. In the partition proceedings, the non-applicant/defendant No. 1, who is legal heir of JD Surjit Singh had got filed different applications from his sisters and had been creating multiplicity of litigation. He had been prolonging the litigation. The defendant No. 1 even got filed a writ petition before this Court from Smt. Pritam Kaur his mother, which was dismissed with strong observations against the petitioner thereunder.

8. Some instances of further conduct of defendant No. 1 may be noticed hereafter.

9. Non-applicant/defendant No. 1 submitted release order purportedly passed by the Civil Court before the Tehsildar. Doubting veracity of the same, it was referred to the executing Court of Addl. Civil Judge (Senior Division). Vide communication dated 15.12.2000 it was clearly mentioned by the executing Court that no release of the attached land had been ordered in favour of the non-applicant/defendant No. 1 who was then found to have made wrong declaration before the Tehsildar regarding release of the land basing his claim on report No. 24 dated 5.2.2000 which was found to be false. Consequently, FIR No. 22 under Sections 420, 468 and 471 of IPC was registered against him.

10. Clearly enough in this recently filed suit, defendant No. 1 in the shape of petitioner/plaintiff has found a mouthpiece so as to perpetuate his wrongful possession who is claiming himself to be a tenant under respondent/defendant No. 1 without any document of tenancy or proof of his possession as such. It is also to be noticed further that in the execution proceedings auction purchaser respondent/defendant No. 2 after partition proceedings and execution of sanad

taqseem in his favour, had already been obtained possession of the land in dispute. Petition regarding execution of the arbitrator Award which was rule of the Court has already been satisfied. Even the revenue record clearly records possession of the defendant No. 2 as owner.

11. The lower Court in the impugned order of 7.11.2013 has clearly noticed that not only the revenue record but even the record of the Executing Court clearly depicts that possession of the land is with the decree-holder-defendant No. 2 and plaintiff is no where connected with the land either as tenant or otherwise and further that he is not in possession of the same.

12. At this stage, it would be relevant to mention that this Court while dismissing a writ petition preferred by Smt. Pritam Kaur, mother of defendant No. 1 had observed as under:-

The petitioner apparently has adopted a smart move to say that she is not being looked after by her son and is living separately. To me, it will sound an attempt by her son by firing from shoulder of his mother. While dismissing the writ petition, I would only express a word of caution that such thing do not pay in the long run either for a party or a counsel.

13. The plaintiff is named Heera Singh son of Mohan Lal of village Saloh, District SBS Nagar. Observations made by the First Appellate Court in order dated 16.5.2014 are as under:-

The fact to be seen in this case is as to whether the plaintiff is in possession as tenant over the suit property. The jamabandi for the year 2007-08 relied upon by him shows that khasra numbers in dispute are in possession of one Heera Singh son of Ajit Singh. Therefore, the name of plaintiff cannot be said to be recorded as tenant in possession in the jamabandi for the year 2007-08 as relied upon by him. It has been argued by the learned counsel for the plaintiff that the name of the plaintiff is Heera Singh son of Mohan Lal alias Ajit Singh, but this plea of plaintiff is got to be proved that his father Mohan Lal was also known as Ajit Singh. The copy of Aadhar Card, Voter Card and Ration Card show that father's name of plaintiff is Mohan Lal and in none of these documents, the name of his father is mentioned as Ajit Singh. Therefore, the plaintiff has failed to prove the fact that his father Mohan Lal was also known as Ajit Singh and it seems that he is taking the benefit of entry in favour of one Heera Singh son of Ajit Singh. Even otherwise, in plaint, plaintiff has mentioned his name as Heera Singh, whereas in all the above said documents, i.e. Aadhar Card, Voter Card and Ration Card, his name is mentioned as Heera Lal son of Mohan Lal. Therefore, the plaintiff has failed to prove his possession over the suit land, not to talk of his tenancy under defendant No. 1. No such receipt has been produced on the record by him regarding the payment of any rent.

XXX

The plea that plaintiff was entitled to injunction is not tenable. In the instant case, no such receipt even has been placed on record by the plaintiff and the revenue record rather does not support him.

14. Finding no merit in the revision petition, the same is dismissed.