

In the Court of Sh. Arjun Singh, Civil Judge(Jr. Div.) Amritsar.

CS No. CS/6615/2018
Date of Inst.: 05.12.2018

Ruchi Aggarwal vs Prabhjot Singh

Application under order 39 Rule 1 & 2 read with section 151 CPC

Present: Sh. Navneet Singh Chauhan Advocate for the plaintiff.
Sh. Amit Chadda Advocate for the defendant no.1 to 3.

ORDER :-

1. This order shall dispose of an applications filed under order 39 rule 1 and 2 CPC.
2. Briefly, the facts of the present application are that the plaintiff purchased the suit property from **Gulab chand through his General Attorney** who had earlier purchased the said property vide registered sale deeds through its previous owners whereby the original ownership of the property is admittedly traceable to Amarjeet Kaur wife of Charan Singh. The plaintiff purchased the said property for a valuable consideration vide registered sale deed dated **28.11.2018**. It has been submitted that the defendants are absolutely stranger to the suit property and are illegally interfering into possession of the plaintiff over the same. Hence necessitating the filing of the present application.

Notice to the plaintiff/ non-applicants:-

3. Upon notice of the application, the reply was filed by the defendants. It has been submitted that defendant no.1 Prabhjot Singh alongwith Randhir Kaur, Amandeep Kaur and Sandeep Kaur are the legal

heirs of Pargat Singh and they have got 1/2 share in the land measuring of 06 Kanals bearing Khasra no. 464 and they are in possession of the suit property as per their share, particularly on the portion shown Green in the site plan. The defendants no.2 and 3 have un-necessarily been impleaded as party, but they have got no concern with the property in dispute. The defendant no.1 alongwith other legal heirs of Pargat Singh are joint owner of the property to the extent of 1/2 share. The Khata of the parties is still joint in the Jamabandi. The other half portion is still owned by Amarjit Kaur (Bhua of the defendant no.1 and she has carved out plots in 1/2 portion of the suit property and also carved out one street and after carving out the plot and street/ passage, she has sold some plots to the various persons and that portions are shown Yellow in the site plan and now she has already sold her entire share to the different vendees, Now, she has left no share in the suit property. The plaintiff who alleged one sale deed of a plot does not exists at the spot. The plaintiff under the garb of the present suit, wants to encroach upon the property of the defendant no.1 shown Green in the site plan. On the spot, the plaintiff is not in possession of any portion of the suit property. Even if it is presumed for the sake of arguments, the plaintiff has purchased one plot from other co-sharers, even then no injunction lies against the other co-sharers. The portion which is in possession of the defendant no.1 is lying vacant which is shown as Green in the site plan. It is also pertinent to be mentioned over here that in the Jamabandi, there is total land measuring is 06 Kanals of the khasra no. 464, but on the spot, there exist only land measuring 05 Kanals and this aspect can be verified by appointment of Local Commissioner. The khasra Girdawri regarding 1/2 portion of the suit property is already coming in the name of the defendant no.1.

Conclusion:-

4. Heard on the application. It is an admitted fact that the present defendants are owners to the extent of half share of the suit property while, Amarjeet Kaur who is aunt of defendant no.1 was the owner of the said property to the extent of the other half share. It is also not in dispute that she sold her property to various persons including the present applicant wherein the property being held between defendant no.1 to 3 and said Amarjeet Kaur was an unpartitioned co-sharer property. It is no doubt true that before partition is effected, a co-sharer cannot sell any specific share of the property however if the same has been done, as in the present case, the subsequent purchaser have simply stepped into the shoes of the original co-sharer to the extent of the subsequent purchaser's ownership. The apprehension of the applicant is that the defendants shall dispossess them from their possession over the suit property. However this Court is of the opinion that since the applicant has simply stepped into the shoes of the original co-sharer, it is a settled law that injunction must not be granted to a co-sharer against the other in case of unpartitioned co-sharer property. Unless the property is partitioned, the subsequent purchaser cannot be held owners of any specific portions of the property. With the said reasons, the present application for temporary injunction stands dismissed.

(Arjun Singh)

Civil Judge (Jr. Division)/ASR
UID no. PB0532

Date of order: 05.02.2020

*Sarishty Paudwal
(Stenographer Gr.III)

Ruchi Aggarwal vs Prabhjot Singh

CS/6615/2018

Present: Sh. Navneet Singh Chauhan Advocate for the plaintiff.
Sh. Amit Chadda Advocate for the defendant no.1 to 3.

Vide separate order of the even date application U/o 39 Rule
1 & 2 C.P.C stands disposed off. Adjourned to 27.03.2020 for framing of
issues.

(Arjun Singh)
CJJD/ASR
UID no. PB0532

Date of order: 05.02.2020

*Sarishty Paudwal (Stenographer Gr.III)

Next date: 27.03.2020

Purpose: _____