

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.1340 of 2014(O&M)
Date of Decision: 23.09.2015**

Kailaso Devi & ors. ... Petitioners
Versus

Nidhan Singh ... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjeev Kumar Bawa, Advocate,
for the petitioners.

Mr. Saurabh Arora, Advocate,
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

Having heard learned counsel for the parties at some length and paying due regard to the latest photographs showing apparent violation of the status quo order passed by this Court and on a revisit to the report of the Local Commissioner appointed by this Court which shows that the portion occupied by the petitioners is far in excess of their share in joint property of which a part abuts the main road which has to be reduced to fit the partition decree in the expedited partition proceedings under directions of this Court.

Besides, the fact is that even after the status quo order was issued on August 14, 2014 and the subsequent order dated September 4, 2014, passed after hearing Mr. Arora appearing for the respondent, this Court is convinced that there are only two ways to resolve the present dispute raised in the application, one is to take out contempt proceedings against the petitioners for carrying out further construction and plastering

the walls without seeking leave of this Court and defending the action by putting the blame on bad legal advice given by the district court lawyer appearing for the petitioners. The other way is to decide the petition itself, since the partition proceedings have concluded in the court of first instance dividing the suit land according to the respective shares and having regard to the present revision arising out of an interlocutory order passed in appeal under Order 39 Rules 1 & 2 of the CPC in the main suit where an injunction stands issued in favour of the respondent coupled with the fact that the interim order dated July 17, 2014 was obtained improperly as explained by Mr. Saurabh Arora in his application; C.M. No.15877-CII of 2014, this court is of opinion that the better course would be that the impugned order passed by the Lower Appellate Court dated July 19, 2013 is maintained by dismissal of the main petition as no infirmity or any fundamental flaw of reasoning has been found in that order after hearing. The appellate order impugned in this petition under Article 227 of the Constitution is affirmed.

Therefore, the petition stands dismissed. It will be open to the respondent to seek appropriate directions in the civil suit and in the appeal pending in the Court of the SDM, Mukerian, District Hoshiarpur in partition proceedings and for both the courts to devise ways and means to give full effect to the impugned order passed by the learned Additional District Judge Hoshiarpur under Order 39 Rules 1 & 2 CPC in favour of the respondent.

As a result, the ex parte interim order dated July 17, 2014 shall stand vacated in view of the dismissal of the main petition.

23.09.2015**monika****(RAJIV NARAIN RAINA)
JUDGE**