

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

CR 2494 of 2015

Date of decision:- 9.4.2015

Ajay Khanna and ors

Petitioners

vs.

Om Parkash and ors

Respondents

Present: Mr. Vaibhav Narang, Advocate.

M.M.S.BEDI,J.

Suit for partition, filed by Om Parkash, now represented through his legal heirs, was decreed ex-parte against the petitioners, who happen to be defendants 2,4,5,6,7, and 8. Defendant No.1 Shiv Parkash moved an application for transposing as plaintiff. The said application was allowed on 25.5.2005 and he was transposed as plaintiff No.2. The petitioners claim is that they had no knowledge about the partition proceedings and the suit of the plaintiffs was decreed ex-parte qua them on 24.12.2005. The application under Order 9 Rule 13 CPC, filed by the petitioners has been dismissed by the trial court as well as by the lower appellate court holding that the petitioners being members of same family were aware of the partition proceedings and that they had intentionally avoided appearance before the civil court, as such, the lower appellate court has affirmed the order passed on the application under Order 9 Rule 13 CPC by the trial court.

Counsel for the petitioners submits that the other co-sharers have now alienated the property more than their share, causing serious prejudice to the petitioners.

After hearing learned counsel for the petitioners, I am of the opinion that the rights of the defendant- petitioners had not been prejudiced as their share in the property had been safe-guarded. I do not find any sufficient ground to interfere in the concurrent finding of fact regarding the knowledge of the petitioners about the proceedings pending against them.

The petition is dismissed without prejudice to the rights of the petitioners to challenge the alienation of the property by their co-sharers beyond their share in accordance with law or to raise objections in the execution proceedings, if permissible under law, if these have not been finalized.

April 9 ,2015
TSM

(M.M.S.BEDI)
JUDGE