

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.3461 of 2013
Date of decision:09.02.2015

Tilak Raj & others

....Petitioners

Versus

Narinder Kumar & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.P.K.Gupta, Advocate, for the petitioners.

Mr.Rajiv Joshi, Advocate, for respondents No.2 & 3.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition, filed by the defendants, is to the order dated 24.03.2012 (Annexure P7), whereby the injunction application was allowed and the defendants were restrained from changing the nature of the suit land from agricultural to commercial and from alienating the suit land more than their share till the final decision of the suit. It was specifically ordered that the order will be inoperative qua khasra no.14//6/2.

The reasoning given by the Trial Court was that a *prima facie* case was made out and once construction was raised, the change would be irretrievable and could not be negated. The matter was taken in appeal before the Lower Appellate Court, who dismissed the same on 10.01.2013 (Annexure P9), by noticing that no partition had taken place and construction could not be raised on account of the plea that there was no partition.

The land is agricultural in nature and converted for use of commercial purposes, it would lead to irreparable loss to the plaintiffs. In the suit filed, plea taken is on the basis of a settled principle that a co-sharer cannot harm the other co-sharer, by raising construction without getting the land partitioned

and without any sanction from the authorities. The plea of the plaintiffs specifically was that the agricultural land was joint and no partition had been effected and the petitioner-defendants had started raising construction and changing the nature of the land and had collected building material.

The defence of the petitioners was that they were in exclusive possession of the northern portion of the suit property whereas the plaintiffs were in exclusive possession of the southern portion. Oral family settlement between the predecessors of the parties was set up in the year 1962, to defend the suit. It was further averred that construction of the factory had already been raised and the boundary walls of the height of 8 ft. had been constructed and shed had been constructed of the height of 16 ft. One room with toilet and septic tank had been constructed and ₹16 lakhs had been spent on the construction. Photographs were also attached to show that they were setting up a factory for manufacturing fuel briquettes and they would suffer huge loss in case they were stopped from raising construction.

The Trial Court noticed that only the outer boundary walls had been raised and there was still grass and other plants growing. Small structure of a toilet and one small room had been raised and only foundation had been laid. Neither any lintel had been raised nor any roof. The factum of machinery having been installed and construction having been raised to the roof level was negated by holding that the walls had not been plastered and the suit had been filed on 06.03.2012 and construction had only started in November, 2011 and was thus, in a stage of infancy. Accordingly, petitioners were restrained from changing the nature of the suit land. The appeal was also dismissed, keeping in view the above facts.

The Division Bench of this Court in **Bachan Singh Vs. Swaran**

detriment of another co-sharer, without getting partition effected and laid down the principles, which read as under:

“15. On a consideration of the judicial pronouncements on the subject, we are of the opinion that:

(i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession.

(ii) Mere making of construction or improvement of, in the common property does not amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which is detrimental to his interest.

In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction restraining the co-owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner.

16. In this view of the matter, we are unable to agree to the propositions laid down by the learned Single Judge of this Court in *Nazar Mohd. Khan v. Arshad Ali Khan and Ors.* (supra) wherein his Lordship broadly stated that there is no denying the fact that a co-sharer has no right to raise construction until the land is partitioned by metes and bounds and so even when one of the co-sharers is in exclusive possession of a particular piece of land any other person can seek injunction restraining the other co-owner from raising construction. We accordingly overrule the said decision of the learned Single Judge of this Court and also the decisions in *Mst. Parsini alias Mono v. Mahan Singh*, 1982 P.L.J. 280, *Om Parkash and Ors. v. Chhaju Ram*, 1992 P.L.J. 546 and *Daulat Ram v. Dalip Singh* 1989 R.L.R. 523.

Since we have answered the Reference, we direct the Registry to place this revision petition along with the other connected revision petitions before the learned single judge for appropriate orders

after obtaining necessary orders from the Hon'ble the Chief Justice.”

The Apex Court in *Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass 2004(8) SCC 12* has held that in such circumstances, it would be appropriate for the parties to maintain *status quo*. The suit was filed on 06.03.2012 and in such circumstances, at this stage, to interfere in the order impugned also would not be justified, as admittedly, injunction was granted on 24.03.2012. A period of almost 3 years has expired since then. Counsel for the parties are also not aware as to the latest status of the case.

Accordingly, in revision, this Court shall refrain itself from interfering in the concurrent findings recorded by the Courts below. However, in such circumstances, a direction is issued to the Civil Court which is hearing Civil Suit No.37/2012 titled *Narinder Kumar & others Vs. Tilak Raj & others* to expedite the proceedings and decide the same, preferably by 31.12.2015. Nothing said herein shall prejudice the Court below in deciding the Civil Suit, which shall proceed with the matter, in accordance with law.

Revision petition stands disposed of.

09.02.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE