

CR-3933-2015 (O&M)

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

**CR-3933-2015 (O&M).
Decided on: June 30, 2015.**

Jai Singh

... Petitioner(s)

VERSUS

Gian Singh and others

... Respondent(s)

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.Ram Kumar Saini, Advocate,
for the petitioner.**

M.M.S. BEDI, J (ORAL).

Vide impugned order Annexure P7 dated 4.3.2015, the trial Court had allowed the application of the plaintiff-petitioner restraining the defendants- respondents from raising any construction on the property in dispute as the statements were made by the defendants to the effect that they have no intention to raise any construction.

The lower appellate Court on an appeal filed by the defendants-appellants has set aside the order restraining the defendants- respondents from raising any construction on the ground that the plaintiff- petitioner has himself raised construction in the capacity as a co-sharer in the property in dispute.

Counsel for the petitioner submits that on account of statements made by the defendants, Annexures P8 & P9, on 28.10.2013, the application for interim injunction filed by the plaintiff-

CR-3933-2015 (O&M)

petitioner should have been allowed.

I have heard the learned counsel for the petitioner and carefully gone through the averments made in the plaint filed by the petitioner wherein the petitioner has sought possession by partition of the property measuring 2 kanals 6 marlas mentioned in heading of the plaint. As a matter of fact in the main suit no injunction has been sought against the defendants-respondents to raise construction on any portion of the property.

So far as the statement dated 28.10.2013 Annexure P8 is concerned, a perusal of said statement indicates that the defendant made a statement through counsel to the effect that the defendant would not raise any construction on the suit property till disposal of the said application. The said statement does not debar the defendants-respondents to contest the claim of the petitioner for interim relief of restraining the defendants-respondents from raising construction on the land in dispute which admittedly is co-owned and co-possessioned by the plaintiff- petitioner along with defendants-respondents.

So far as the second statement Annexure P9 is concerned, defendant- respondent has undertaken not to sell the suit property till the disposal of the stay application. As such the statements dated 28.10.2013 do not create any waiver against the defendants-respondents to enforce their legal rights as co-sharers in possession and to raise construction which would certainly be

CR-3933-2015 (O&M)

subject to final decision of the case and will not defeat the rights of the plaintiff- petitioner.

The lower appellate Court has considered the said rights of a co-sharer to raise construction in the light of various judgments of this Court as well as of Hon'ble the Apex Court. The co-sharer in possession cannot be restrained from raising construction during pendency of the suit for partition. Construction, if any, raised will not, in any manner, confer a right on the defendants-respondents to defeat the rights of the plaintiff- petitioner in the suit property.

The petition is dismissed.

June 30, 2015.
rka0

(M.M.S. BEDI)
JUDGE