

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 3840 of 2014

Date of Decision: 23.07.2015

Raghbir Singh

.....Petitioner

Vs.

Ishro Devi and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Jasmer Singh Rozera, Advocate,
for the petitioner.

Mr. V.K. Gupta, Advocate,
for the respondents.

SABINA, J.

Petitioner has filed this petition challenging the orders dated 28.04.2014 and 20.03.2014.

Learned counsel for the petitioner has submitted that the parties are co-sharers qua the suit property. Therefore, respondents could not be permitted to raise construction over the joint property. Partition proceedings qua the said property were pending.

Learned counsel for the respondents, on the other hand, has opposed the petition and has submitted that the land in question had been orally partitioned between the parties. Parties are in possession of their respective share as per the oral partition. Respondent could raise construction over the property in their possession.

Petitioner has filed suit for permanent injunction. Along with the suit, an application for temporary injunction was filed. On an application, moved by the defendants, Local Commissioner was appointed by the trial Court. As per the report of the Local Commissioner, defendants were raising construction on area measuring 33 feet x 40 feet towards north-west side of the property in question bearing Khasra No. 226. The defendants have already constructed rooms over area measuring 33 feet x 13 feet towards the north-east corner of the said suit property whereas the remaining suit property was lying vacant.

Suit land measures 1 Kanal. It has been noticed by the trial Court that as per the revenue record, the petitioner and his brothers were co-owners to the extent of half share in the suit land. Similarly the defendants were co-sharers qua the said property to the extent of half share. As per the site plan Annexure P-4 prepared by the Local Commissioner, it is evident that both the parties are in separate possession of their respective 10 Marlas of land. Construction has been raised by the defendants qua area measuring 33 feet x 40 feet.

The learned trial Court while disposing of the application under Rule 39 Rule and 1 and 2 of the Code of Civil Procedure, 1908 has held as under:-

“Till the disposal of the instant suit, the defendants are restrained from raising any sort of construction on the area measuring 80 feet x 33 feet (shown in blue colour), on the area measuring 33 feet x 27 feet (shown in purple colour) and on the

area measuring 33 feet x 13 feet (shown in green colour) in the site plan prepared and submitted by the Local Commissioner.

The defendants may, however, complete the construction in the area measuring 33 feet x 40 feet (shown in orange colour) in the site plan submitted by the L.C. It is however, made clear that such construction raised by the defendants shall be wholly at their own risk and costs in as much as mere factum of raising of such construction shall not cloth them with any indefeasible right over the area in the partition proceedings stated to have been pending before the revenue authorities. If during partition any portion of this area comes to the share of the plaintiffs, the defendants shall have to demolish the construction raised by them on such area at their own costs.”

A perusal of the above order reveals that the trial court while passing the said order on the basis of the report of the Local Commissioner has protected the rights of both the parties.

In these circumstances, no ground for interference is made out.

Dismissed.

However, any observation made above will have no bearing on the merits of the case.

**(SABINA)
JUDGE**

July 23, 2015
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