

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

C.R. No. 5109 of 2015 (O&M)

Date of decision:- 12.08.2015

Sanjay

...Petitioner

Versus

Society of Brothers of Saint Gabriel Province of Delhi

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Keshav Pratap Singh, Advocate
for the petitioners.

RITU BAHRI J.

This petition under Article 227 of the Constitution of India is for setting aside order dated 31.10.2013 (P-1) passed by the learned Addl. Civil Judge (Jr. Divn.) Faridabad, whereby the application under Order 39 Rule 1 and 2 read with Section 151 CPC has been dismissed and order dated 15.05.2015 (P-2) whereby the appeal filed against the aforesaid order, was dismissed.

The petitioner filed a suit that he is owner in possession of agriculture land measuring 46 kanals 02 marlas situated within revenue estate of village Bahadarpur, Tehsil Ballabgarh, District Faridabad, as per jamabandi for the year 2006-07 and mutation Nos. 1140, 1195, 1344, 1361 and 1362. He had sold some part of land along with front

of 98 ft. wide towards eastern side in Killa No. 12/2, 9/1, 2/1 and Killa NO. 3/1 to Bhagwat Prasad, who further sold his 160/922 share to Ram Avtar vide mutation No. 1140 dated 20.12.2008, which was sanctioned. Thus, the petitioner was left with 50 ft. wide front in Killa No. 12/2, 9/1 & 2, out of which the petitioner sold 30/922 share i.e 1 kanal 10 marlas in the total land measuring 12 kanals. Thereafter, at the time of sale-deed vasika No. 5568 dated 31.07.2012, which was mutated vide mutation No. 1344 dated 29.08.2012, it was settled that all co-shares will have 61 ft. wide front in the total land but now the defendants wants to raise the boundary wall in the share of the petitioner.

The defendant is owner in possession of the land in dispute and it was purchased from Ankit Kumar, Ashwani Kumar and the present petitioner, vide registered sale deed dated 31.07.2012 for a valuable consideration of Rs.85,65,000/- and the possession was delivered to him. There is a recital in the sale deed that the property has 61 ft. front on Bahadurpur-Chandpur road but the petitioner in order to extract more money filed the present suit. A criminal complaint has been lodged by the defendant against the petitioner wherein Halqa Patwari recorded his statement to the effect that the defendant was in possession of the property and the petitioner wants to grab its portion.

Keeping in view the fact that the partition proceedings is pending before the Revenue Court and the petitioner and defendant had become co-sharers by virtue of sale deed dated 31.07.2012 and hence no injunction can be issued against co-sharer. However, the construction if any raised, will be subject to the final partition of land by metes and bounds.

The orders passed by the Courts below (P-1 and P-2) does not require any interference by this Court as during the pendency of the partition proceedings, no injunction can be issued against co-sharer, who is in possession of the land, by virtue of sale deed dated 31.07.2012 and the defendant was given possession after making sale consideration of Rs.85,65,000/-.

The revision petition is devoid of merit and is accordingly dismissed.

August 12, 2015
G Arora

(**RITU BAHRI**)
JUDGE