

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.5600 of 2012 (O&M)

Date of decision:12.01.2015

Kamaljit Kaur & others

....Petitioners

Versus

Paramjit Kaur & others

.....Respondents

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

Present: Mr.Vikram Rathore, Advocate, for the petitioners.

Mr.B.B.S.Sobti, Advocate, for the respondents.

G.S.Sandhawalialia J.(Oral)

Challenge in the present revision petition, filed by the defendants-petitioners, is to the order dated 01.10.2009 (Annexure P12), passed by the Civil Judge (Jr.Divn.) Ludhiana, granting injunction to the plaintiffs and upheld in appeal on 07.06.2012 (Annexure P13). The defendants were restrained from damaging or demolishing, making any additions, alterations or fresh construction in the property in dispute and were further restrained from alienating, in any manner, any specific part or portion of the suit property till the property was partitioned by metes and bounds.

The suit was based on the fact that the father-in-law of respondent No.1/plaintiff, namely, Gulzar Singh was the owner of the property in question and he died on 22.02.2001. He had executed a valid Will dated 20.12.2000, in favour of the plaintiffs and defendants No.1 to 4. The husband of the plaintiff had died in the year 2003 and they had been enjoying the suit property in joint possession of 1/5th share. The plaintiff was having ration card etc. showing the possession of the plaintiff over the suit property. The defendants being co-

property and if injunction was not granted, the plaintiffs would suffer irreparable loss and injury.

In the written statement filed by the present petitioners, the plea taken was that the property was measuring 500 sq.yards and defendants No.4 to 8 were in possession where they were carrying business and the said portion was commercial and the roof had fallen down on account of heavy rains and they had no option but to demolish the said portion. The interest of the plaintiffs was to harass them from carrying out the business of the firm, M/s Supernova Technologies and that injunction could not be sought by the plaintiffs against the co-sharers.

The Trial Court came to the opinion that the plaintiff was a co-sharer in the property in dispute which was joint and no partition had been effected and keeping in view the said position of law that a co-sharer cannot restrain another co-sharer from enjoying the property, injunction was not granting regarding that aspect. However, they were restrained from damaging or demolishing, making any additions, alterations or fresh construction in the property in dispute and were further restrained from alienating, in any manner, any specific part or portion of the suit property till the property was partitioned by metes and bounds. The appeal of the defendant-petitioners was dismissed on 07.06.2012 (Annexure P13). The Court noticed that if the appellants made new construction, it would change the already existing construction and the nature of the property and would affect the rights of other co-sharers and therefore, injunction had rightly been granted and accordingly, the appeal was dismissed.

An effort was made by this Court to resolve the issue by sending the matter to the Mediation & Conciliation Centre of this Court but the said process remained unsuccessful. The injunction, which has, thus, been granted under the

is granted. Plaintiffs are also co-sharers, admittedly and therefore, by raising any construction, it would prejudice the rights of the parties since the suit itself is not a simpliciter suit for permanent injunction but a suit for separate possession by way of partition of the suit property by metes and bounds. In such circumstances, the Courts below have rightly protected the interests of the petitioners. The observations of the Apex Court in **Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass 2004 (4) RCR (Civil) 760** can be kept in mind while dismissing the present revision petition. It is also to be noticed that a period of over 5 years has passed since the injunction had been granted on 01.10.2009. Counsel for the parties are not aware of the proceedings in the case, before the Trial Court.

Accordingly, the present revision petition is hereby dismissed. However, the Trial Court shall make all efforts to dispose of the suit, expeditiously, if not already disposed of.

12.01.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE