IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 602 of 2015
Date of decision: 21.02.2015

Vikas and another ....Petitioner(s)

Versus

Rakesh and another ...Respondent(s)

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

Present: Mr. K.B. Raheja, Advocate,
for the petitioners.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present revision petition filed by the petitioners-plaintiffs is to the order dated 08.12.2014 (Annexure P-1) filed by the civil Judge (Jr. Divn.), Kaithal whereby, the respondents have been restrained from raising construction over the suit land more than their share only. Challenge has also been raised to the order dated 13.01.2015 passed by the Lower Appellate Court whereby, the appeal filed by the petitioners-plaintiffs was dismissed by noticing that in an earlier set of litigation, this Court had allowed the petitioners and the respondents to raise construction in a litigation filed by another set of persons.

Counsel for the petitioner has vehemently submitted that the petitioners being co-sharers to the extent of 1/5th share, are entitled for the injunction and the other co-sharers cannot raise construction to their detriment. It is further submitted that they are being adversely effected being the co-sharers. He has placed reliance upon judgments of this Court in ***Ram Niwas vs. Jai Ram @ Tej Ram, 2000 (3) RCR (Civil) 738; Aarlia Builders and Developers Pvt. Ltd. vs. Sukhda Promoters Pvt. Ltd. and***

others, 2014 (2) PLR 123 and of the Apex Court in ***Gangubai Babiya Chaudhary and others vs. Sitaram Bhalchandra Sukhtankar and others and others, 1983 (4) SCC 31; T. Lakshmipati and others vs. P. Nithyananda Reddy and others, 2003 (5) SCC 150*** and ***Maharwal Khewaji Trust vs. Baldev Dass, 2004 (8) SCC 488.***

The background of the case is interesting and peculiar in the present litigation since admittedly, the petitioners alongwith the respondents vide sale deed dated 15.05.2014, purchased 4 kanals of land. The shares of the petitioners were only 1/10th each whereas the respondents had share of 6/10th and 2/10th each. One Gurpal Singh filed civil suit against them seeking injunction on the ground that they were all co-sharers in the property and the construction could not be raised on the land purchased by the present parties. The matter reached this Court in C.R. No. 4553 of 2014 and this Court permitted the present parties to the civil revision and the purchasers of the 4 kanals to raise construction. The relevant part of the order dated 12.11.2014 reads thus:-

> *"From the facts and circumstances narrated herein above, it is Prima facie clear that the property is khasra no. 1138 belongs to various co-sharers and is being sold from time to time including the plaintiffs, which is evident from the averments made in the additional affidavit filed alongwith CM no. 15572-CII2014. The respondents have prima facie proved that possession was delivered to Rajpal when he had filed the suit for preemption and the same has been handed over by him when the sale deed was executed by him as it is so recorded therein. At this stage, when the trial court has to appreciate the evidence, the construction which has already been partly raised can not be*

stopped but it is made subject to the outcome of the suit. With these observations, the present revision petition is hereby disposed of."

The civil suit for permanent injunction was then filed on 01.12.2014 by the present petitioners against their co-purchasers that they were joint owners and the respondents had started raising construction and were acting to their detriment and should be stopped from raising construction till the property was partitioned. The respondents contested the said suit by taking the plea that the real facts have been suppressed and the earlier litigation was referred to and it was pleaded that the plaintiffs were estopped by their own act and conduct and they were guilty of delay and laches. The construction was also stated to be almost complete and residential house was being constructed and shops were also being constructed which construction had been started immediately after the sale deed dated 15.05.2014 was executed but the plaintiffs-petitioners had never raised any objection. Keeping in view the pleadings, the trial Court protected the petitioners to the extent of their share. As noticed, the appeal has also been dismissed keeping in view the fact that this Court had already permitted the parties to raise construction.

The submission raised by counsel for the petitioners in the peculiar facts and circumstances cannot be accepted. Apparently, the suit was filed on 01.12.2014 immediately after the order dated 12.11.2014 was passed by this Court in C.R. No. 4553 of 2014. The petitioners have been defending the earlier litigation and were aware that the construction had been raised after the purchase of the property from 15.05.2014 and had contested tooth and nail alongwith the respondents. They are thus estopped now and cannot change course mid way and take the plea that their co-purchasers are raising construction to their detriment. The judgments thus cited above are not applicable to the facts and circumstances of the case keeping in view the conduct of the parties. This Court, once has permitted construction to be raised on the premises by the parties, any order to the contrary would only complicate the issue unnecessarily and lead to contradictory orders being passed, which would be against judicial discipline.

Accordingly, there is no merit in the present revision petition and the same is dismissed.

21.02.2015 (G.S. SANDHAWALIA)
shivani JUDGE