

CR No. 6542 of 2015
Date of Decision: October 5, 2015

Dinesh Kumar and another

..... Petitioners

Versus

Vinod Kumar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Karan Chaudhary, Advocate
for the petitioners.

Amit Rawal, J (Oral)

The petitioners-defendants are in revision against the order dated 21.1.2015 passed by the trial court and 1.7.2015 whereby the appeal filed against the aforementioned orders allowing the application filed by the respondents-plaintiffs under Order 39 Rule 1 and 2 CPC has been dismissed.

Learned counsel appearing on behalf of the petitioners-defendants submits that categorical stand in the written statement was that the defendants had raised the construction of shops and the plaintiffs did not raise objection. The suit for permanent injunction seeking injunction against the co-sharer is/was ex facie not maintainable. The aforementioned facts have not been noticed by both the courts below while allowing the application. Thus, there is illegality and perversity in the orders, as ingredients of Order 39 Rule 1 and 2 CPC have prima facie not been proved.

I have heard learned counsel for the petitioners and appraised the paper book.

Learned counsel for the petitioners, at the outset

submits that the partition proceedings are pending before the revenue court. The revenue court has no power to grant interim injunction, rightly so, the defendants have been enjoined not to change the nature of the property, much less raise construction till the partition proceedings are continued.

The suit has been filed in the year 2015 and the matter is now slated for respondents'-plaintiffs' evidence. I do not intend to differ with the finding rendered by both the courts below and accordingly, the same are upheld. However, I deem it appropriate to issue direction to the trial court to expedite disposal of the suit, since the matter is slated for respondents'-plaintiffs' evidence, preferably within a period of one year from the date of receipt of certified copy of the order.

While upholding the impugned orders, revision petition, with the aforementioned directions, stands disposed of.

(AMIT RAWAL)
JUDGE

October 5, 2015
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