

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

(1) Civil Revision No.77 of 2015

Diwan Singh and others

..... Petitioners

Vs.

M/s. Unitech Limited and others

..... Respondents

(2) Civil Revision No.78 of 2015

Diwan Singh and others

..... Petitioners

Vs.

M/s. Ruhi Construction Company Limited and another

..... Respondents

Date of Decision: 09.01.2015

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Chetan Mittal, Senior Advocate assisted by
Mr. Varun Issar, Advocate for the petitioners.

JASWANT SINGH, J. (ORAL)

This order shall dispose of aforesaid two revision petitions as both are based upon similar facts and arise out of same proceedings.

The applicants/petitioners are aggrieved against the order dated 16.12.2014 (**P-8**), passed by the learned lower Appellate Court/District Judge, Gurgaon, whereby in the pending appeal filed by the defendants-M/s Unitech Ltd. and others against the decree of injunction dated 31.08.2013 (**P-4**) in favour of the brother/co-sharer Randhir Singh, their application under Order 1 Rule 10, CPC for impleadment as party has been dismissed.

It is not in dispute that the suit land comprising 33 Kanals 12 Marlas in Village Fatehpur, Tehsil and District Gurgaon was owned by the father Deva Singh and his six sons (including the plaintiff Randhir Singh and the applicants) to the extent of 1/7th share each, having been distributed by their ancestors in that manner. The said Deva Singh died on 15.10.2003 and it is claimed that the defendants-builders purchased two shares of two of the sons prior to the death of Deva Singh and, therefore, became owner in possession to the extent of 2/7th share, thereafter brother Randhir Singh filed the present suit on 15.09.2005 claiming that he is owner in possession to the extent of 1/6th share and the defendants/builders be restrained from any construction beyond their share over the suit property. To protect the assertion of exclusive possession of the defendants, they pleaded that the family partition had taken place. The learned trial Court, vide decree dated 31.08.2013 decreed the suit and restrained the defendants/builders from raising construction over the suit property exceeding their share in the same while recognizing the claim of the plaintiff of 1/6th share in the suit property. The construction to be raised by the defendants was made subject to the partition between the co-sharers. The defendant-builder has filed an appeal before the learned lower Appellate Court, wherein the applicants who are brothers of the plaintiff Randhir Singh or successor-in-interest of the said brothers filed their applications for their impleadment, which have been declined by the learned lower Appellate Court.

After making submissions at length and having failed to convince the Court, learned Senior Counsel lastly argued that an observation has been made by the learned lower Appellate Court in Para 21 of the impugned order dated 16.12.2014 to the effect “ *it is worthwhile to note that Randhir Singh is admittedly one of the co-sharers in the suit land and if he has filed a suit under*

appeal then it amounts to watching of interest of all the co-sharers”, which would seriously prejudice the interest of the applicants in the case of filing of independent suit for protecting their rights qua the co-sharers.

After hearing learned Senior Counsel for the petitioners, this Court first of all finds nothing offending in such observation, as the same relates to protecting of the interest of the applicants qua construction to be raised by the defendants-builders beyond their share. Whatever remedy is available to the applicants under law cannot be curtailed by such an observation.

In view of the above, both the petitions are dismissed.

January 09, 2015
Gagan

(JASWANT SINGH)
JUDGE