

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.1070 of 2016

Date of Decision.12.02.2016

Nachhatar Singh and others

.....Petitioners

Vs.

Gurmeet Singh

.....Respondent

Present: Mr. Sanjeev Soni, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The revision petition is against the order of injunction granted to the plaintiff whose contention was that the defendant is a purchaser from the plaintiff's brother in respect of the property which had been allotted to him in an oral partition. The contention was that the oral partition was confirmed through a document later drawn up in the year 2007 in respect of which the plaintiff was granted exclusive allotment of the property. The defendant resisted the application for injunction on plea that subsequent to the purchase, he had also obtained a mutation and had created a mortgage in respect of the property. The Court has allowed the grant of injunction against the respondent holding that the plaintiff is admittedly a co-owner of the property in respect of his share and he cannot be prevented in enjoyment. The counsel says that if the plaintiff is a co-owner, he is himself a co-owner as a purchaser and that therefore, there is law to

the effect that injunction cannot be granted against the co-owner.

2. The proposition advanced is too wide for acceptance. It is not as if a co-owner cannot obtain injunction against another. It all depends on the nature of relief which is sought. If the co-owner in possession claims that the particular property which the defendant claims as purchaser is in relation to the property which he holds in exclusive possession by virtue of partition that has been effected in the family, a stranger purchaser cannot claim any particular equities or say that he is a co-owner of the property with the plaintiff and therefore, no injunction could be granted. A stranger purchaser's remedy if the vendor's brother would claim that he is himself in actual possession is to apply for partition or to show exclusive possession in a manner that can discredit the plaintiff's prima facie case of entitlement. The defendant had no contention to make other than the fact that there had been a mutation subsequent to the purchase and that he had created a mortgage in respect of the property. A stranger purchaser's right is weaker considering the fact that the plaintiff who seeks for injunction is a person who admittedly was a co-owner with the defendant's vendor and if he has right to fend off any threat of dispossession against stranger purchaser by action for injunction.

3. The counsel shows to me the document on the basis of which the plaintiff places his reliance for proving his exclusive possession was a manifest fabrication. If the two courts below have accepted the document and granted already the relief of injunction, it shall not be possible for me to make an interference on an issue of fact and appreciation of a document at the interlocutory stage. I will find no

cause for interference.

4. Needless to state that all these observations relating to possession or prima facie case of the plaintiff to secure a relief of injunction is only in the interlocutory application and it will not be binding or prevail to conclude the finding that may be necessary at the time of trial of the suit. The revision revision petition is dismissed but with the above observations.

(K. KANNAN)
JUDGE

February 12, 2016
Pankaj*