

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

**CR No.3539 of 2016  
Decided on: 11.08.2016**

Virender

....Petitioner

Versus

Krishan and another

....Respondents

**CORAM: HON'BLE MRS JUSTICE REKHA MITTAL**

**Present :** Mr. Ashish Yadav, Advocate  
for the petitioner.

**REKHA MITTAL, J.**

The present petition has been directed against orders dated 21.03.2016 passed by the Additional District Judge, Gurgaon and dated 20.08.2015 passed by the Civil Judge (Jr. Division), Gurgaon whereby application filed by the respondents/plaintiffs under Order 39 rules 1 and 2 of the Code of Civil Procedure (in short 'CPC') was allowed and the petitioner was restrained from raising any construction over any part of the property till disposal of the suit and the appeal preferred against the order passed by the trial Court has been dismissed thereby affirming the order passed by the learned trial Court.

The respondents/plaintiffs claimed that they and defendant No.1 (petitioner herein) are co-owners of land in Khewat No.646 Khata No.718 Rectangle No.106 Kila No.11(7-16) situated in revenue estate of village Badshahpur, Tehsil and District Gurgaon. The suit land has not been partitioned but the petitioner, working as DSP in Haryana Police wants to raise construction thereon. The demarcation of the portion where the defendant wants to raise construction does not match

with the boundaries given in the sale deed in favour of defendant No.1.

The learned trial Court accepted plea of the respondents/plaintiffs that the parties are co-sharers in joint possession of the property comprising Kila No.11(7-16) and as a co-sharer has right to use the joint property in a husband like manner, not in consistent with the rights of other co-sharer, there exist a *prima facie* case to restrain the parties from raising construction. The Court of appeal affirmed the findings of the trial Court that the suit land is joint and has not been partitioned, therefore, petitioner/defendant No.1 cannot raise construction on specific portion of the suit land which is not in his exclusive possession. It has further been held that as per the sale deed in favour of the defendant, he purchased the plot bounded as follows:-

|        |               |
|--------|---------------|
| East:  | Plot          |
| West:  | 17 feet rasta |
| North: | Plot          |
| South: | Plot          |

The defendant wants to raise construction over the area which is bounded by two roads measuring 11 feet and 5 feet each. There is nothing in the revenue record to suggest that either the plaintiffs or the defendant is in exclusive possession over the suit property.

Counsel for the petitioner has submitted that the petitioner is in exclusive possession of the plot purchased by him vide sale deed No.5791 dated 31.07.1997 (Annexure P-1) with specific dimensions

and boundaries. It is further argued that after purchase of the plot in the year 1997, the petitioner raised construction of a boundary wall over the plot that is clearly reflected in the photographs placed on record of the trial Court. Further argued that the Court of appeal has held that the petitioner wants to raise construction over a plot which is bounded by roads on two sides measuring 11 feet and 5 feet each whereas in view of the boundaries mentioned in the sale deed, there exists a *rasta* 17 feet only towards the western side. It is urged that as per the report prepared by the Patwari dated 10.05.2016 (Annexure P-6) the position has been made clear as to why there is road on two sides of the plot purchased by the petitioner. Another submission made by counsel is that the respondents made a complaint to the higher authorities of the police to vindicate their grievance but on a detailed inquiry, Assistant Police Commissioner, Sohana, Guragaon submitted report dated 07.08.2015 (Annexure P-7) in favour of the petitioner. It is argued with vehemence that as the petitioner is in exclusive possession of 200 sq. yds. of area purchased by him way back in the year 1997 on the basis of a registered sale deed, he cannot be restrained from raising construction over the area in his exclusive possession even if plea of the respondent is accepted that there is no partition of the joint land with the intervention of revenue agency. In support of his contention, he has referred to judgments of this Court ***“Jai Karan Sharma vs Ram Kumar”***, 2009(1) RCR (Civil) 546, ***“Ram Pal and others vs Issar Singh and others”***, 2015(2) ICC 66, ***“Nirmal Singh and others vs Surjit Singh and others”***, 2014(2) Law Herald 1340 and ***“Bachan Singh vs Swaran Singh”***, 2000(3) RCR (Civil) 70.

I have heard counsel for the petitioner and perused the paperbook particularly the orders impugned.

It is an undisputed position of the case that there is no partition of the land comprising Kila No.11(7-16) and in the revenue records, it is recorded to be in joint possession of co-owners including the petitioner and the respondents. Counsel for the petitioner has sought to assail the consistent findings recorded by the Courts below with the contention that the petitioner is in exclusive possession of the area measuring 200 sq. yds. purchased by him vide sale deed dated 31.07.1997 (Annexure P-1). No doubt, in the sale deed executed in favour of the petitioner, dimensions and boundaries of the area sold in his favour to the extent of 07 marlas i.e. 200 sq. yds. have been given. There is no evidence on record at this stage that the said plot is bounded by a boundary wall in order to show *prima facie* in favour of the petitioner that he is in exclusive possession of the area purchased by him through the sale deed (Annexure P-1). The photographs, if any, produced before the trial Court cannot be taken as an evidence of exclusive possession or the plot being bounded by a boundary wall.

The Court of appeal in para 6 has noted that the plot purchased by the petitioner has plots on three sides and there is a *rasta* 17 feet on its western side but the petitioner wants to raise construction over the area which is bounded by roads on two sides measuring 11 feet and 5 feet each. To clarify the position, counsel for the petitioner has sought to rely upon a report prepared by area *Patwari* dated 10.05.2016. This report in the opening line makes reference to an order

of *Tehsildar*, Gurgaon but it is not clear as to in which proceedings, *Tehsildar*, Gurgaon made any such order for preparing a report by the *Patwari*. It is also not clear if the respondents/plaintiffs had a notice of the proceedings conducted by *Tehsildar*, Gurgaon much less any such order having been passed by the *Tehsildar* after giving notice/hearing to the respondents. The report does not indicate that any demarcation was conducted at the spot, in accordance with law. Under these circumstances, the petitioner cannot derive any advantage to his contentions from the report (Annexure P-6) in order to contend that the petitioner wants to raise construction over the same plot that was purchased by him in the year 1997. The report submitted by the Assistant Police Commissioner, Sohana, Gurgaon cannot be taken as sufficient to prove that the petitioner is in exclusive possession of the plot purchased by him in the year 1997.

As the petitioner has failed to produce on record any document of unimpeachable credibility to prove his exclusive possession, sufficient to rebut the entries in the revenue record regarding the parties to be co-owners in joint possession of land comprising Kila No.11 (7-16), I find myself unable to accept the contentions raised by counsel for the petitioner that the orders impugned suffer from illegality much less perversity warranting intervention in exercise of limited jurisdiction of this Court. In the given facts and circumstances, the petitioner cannot derive any advantage to his contentions from the judgments relied upon. I would hasten to add that there is no quarrel with the settled position in law that a co-owner in exclusive possession of the joint land can raise

construction thereon subject to adjustment of rights of the parties at the time of partition unless it amounts to ouster of other co-owners.

For the foregoing reasons, the petition fails and is accordingly dismissed. Nothing stated in this order shall cause prejudice to either of the parties at the time of final disposal of the suit on merits.

11.08.2016  
*yakub*

(REKHA MITTAL)  
JUDGE

|                            |        |
|----------------------------|--------|
| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |