

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

Civil Revision No. 3875 of 2016(O&M)

Date of Decision: May 31 , 2016.

Rajesh

..... PETITIONER (s)

Versus

Saroj and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Abhimanyu Singh, Advocate
for the petitioner.

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?

LISA GILL, J.

This revision petition has been filed by the petitioner challenging order dated 10.05.2016 passed by learned Additional District Judge, Gurgaon whereby order dated 11.02.2016 passed by learned Civil Judge (Junior Division), Gurgaon in the petitioner's favour has been set aside.

Vide order dated 11.02.2016, learned Civil Judge (Junior Division), Gurgaon allowed the petitioner's application filed under Order 39 Rules 1 and 2 read with Section 151 CPC restraining respondents No.1, 2 and 3, in the present revision petition, from raising any construction on

the demise premises on the ground that Jamabandi for the year 2013-2014 reflects petitioner's grandfather, Ram Kishan, as co-owner of the suit property, mutation in this regard had been entered and no partition had taken place between the parties. However, on an appeal filed by respondents No.1, 2 and 3, order dated 11.02.2016 was set aside by the learned Appellate court on the ground that respondents No.1, 2 and 3 are co-sharers in possession and in exclusive possession of the joint property. There being nothing to suggest that petitioner is in physical possession of the plot in question, there can be no restraint on the said respondents to raise construction however subject to determination of the rights of the parties of the suit and without any equity being created in favour of the said respondents by raising of this construction. Aggrieved therefrom, this petition has been filed.

Learned counsel for the petitioner vehemently argues that once Jamabandi for the year 2013-2014 reflects petitioner as one of the owners of the property in question, an irreparable loss would be caused to the petitioner in case construction is raised by the said respondents.

Having heard learned counsel for the petitioner and going through the file, it is apparent that the petitioner has filed a suit for partition with consequential relief of permanent injunction claiming himself to be a joint owner in possession of the property in question. It is also prayed that respondents No.1, 2 and 3 should be restrained from raising construction over the property in dispute without getting the same partitioned.

Per contra, respondents have pleaded that the plot in question was owned by Ram Kishan, grandfather of the plaintiff and father-in-law of defendant No.1. No objection was ever raised by the petitioner, aged forty years, during the life time of his father or his uncles i.e., the brothers of his father. It is not disputed that the petitioner is residing in another ancestral house which fell to his share. Respondents No.1, 2 and 3 have place on record electricity bills of the year 2006 and house tax receipts to show their exclusive possession over the plot in dispute. It is also noticed by the learned Appellate court that there is nothing to suggest that the said respondents have any other accommodation to live in. In the given circumstances, order dated 11.02.2016 has been rightly set aside. Furthermore, respondents No.1 to 3 have been subjected to a specific rider that raising of any construction on the plot in question by them shall be subject to determination of the rights of the parties to the suit and in case the same is decided against their interest, the said respondents shall not claim any equity due to raising of construction.

Consequently, I find no illegality or infirmity in the impugned order dated 10.05.2016 passed by learned Additional District Judge, Gurgaon warranting interference by this Court under Article 227 of the Constitution of India.

Dismissed.

May 31 , 2016.
'om'

(LISA GILL)
JUDGE