

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

CR No.4034 of 2015

Date of Decision:29.11.2016

Kulwant Singh and others

.....Petitioners

Versus

Tarsem Singh and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. R.K. Handa, Advocate
for the petitioners.

None for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioners have assailed order dated 25.07.2014 passed by Additional Civil Judge (Senior Division), Phillaur and order dated 07.02.2015 passed by Additional District Judge, Jalandhar vide which application under Order 39 Rules 1 and 2 read with Section 151 CPC for grant of temporary injunction during pendency of the suit was decided.

[2]. Trial Court granted injunction in favour of plaintiffs-respondents whereas lower Appellate Court modified the same thereby granting order of *status quo* during pendency of the suit.

[3]. Some of the undisputed facts are noticed hereas under:-

(A) Respondents filed a suit for permanent injunction restraining the petitioners/defendants from interfering or creating any encumbrance in free use of passage as alleged in the site plan and also for restraining the defendants from damaging or demolishing Nehri Khal existing in the suit property with reference to khasra numbers. An application for *ad interim* injunction was also filed along with the suit.

(B) Petitioners-defendants contested the suit by filing the written statement. The existence of any passage and Nehri Khal was denied. Possession of the plaintiffs was also denied as there was no partition amongst the shareholders/co-sharers. No partition was given effect in the revenue record. Both the parties are co-sharers and there was no partition *inter se* between them.

(C) Trial Court noticed the aforesaid facts in its order and allegedly appreciated the contention of the plaintiffs on the premise that though there was no partition reflected in the revenue record and the revenue record was also silent with regard to any Khal existing on the spot, but a *prima facie* nature of case was presumed in favour of the plaintiffs on the ground that these facts are subject to leading evidence by the parties at

the appropriate time. Prima facie, it was recorded that one of the co-sharer cannot create any hindrance in the free use of passage and Khal. The lower Appellate Court even after noticing that the property was recorded jointly in the name of the parties in the revenue record, no mutation has been sanctioned so far and the alleged fact of oral partition has not been recorded in the revenue record, still the order of status quo was passed.

[4]. On 17.08.2016, despite service, none appeared on behalf of respondents and they were proceeded against ex parte. The case was listed for arguments for today.

[5]. I have heard learned counsel for the petitioners.

[6]. For granting ad interim injunction, existence of prima facie case, balance of inconvenience and likelihood of suffering irreparable loss in the event of non-grant of ad interim injunction are the three basic principles upon which ad interim injunction has to be appreciated. The Lower Appellate Court though recorded that property is recorded jointly in the name of the parties, but partition is not proved on record. Revenue record is also silent with regard to any Khal existing on the spot. Mutation has not been sanctioned in favour of either of the parties. The factum of oral partition has not been proved on record. Once the prima facie nature of case is not proved on

record, grant of status quo would in any case go in a way to prejudice the rights of the petitioners on the spot.

[7]. It is a settled principle of law that once the parties are recorded to be joint owners and there is no partition, no injunction can be granted in favour of a co-sharer particularly when he is not proved to be in exclusive possession of the property in question. No ouster is claimed by the plaintiffs by pleading alleged oral partition. There is no material on record to presume any such oral partition as the same was never given effect in the revenue record. In the written statement, defendants-petitioners have denied the factum of passage, Khal and alleged partition, therefore in considered opinion of this Court, all the three ingredients for grant of ad interim injunction are missing in the present case.

[8]. In view of aforesaid, this revision petition is allowed. Impugned order dated 25.07.2014 passed by Additional Civil Judge (Senior Division), Phillaur and order dated 07.02.2015 passed by Additional District Judge, Jalandhar are hereby set aside.

29.11.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No