

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

**Civil Revision No.4500 of 2016 (O&M)
Date of Decision: 09.08.2016**

NATHO DEVI AND ANR

.....Petitioners

Vs

UMESH KUMAR AND ORS

....Respondents

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

Present: Mr. S.K. Tripathi, Advocate
for the petitioners.

Mr. Ram Bilas Gupta, Advocate
for the caveator/respondent No.1 to 4.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed order dated 17.06.2016 passed by Additional District & Sessions Judge (Vacations Judge), Faridabad, whereby order dated 10.06.2016 passed by Additional Civil Judge (Sr. Divn.), Faridabad was set aside and application under Order 39 Rules 1 and 2 read with Section 151 CPC for grant of temporary injunction was allowed in favour of the plaintiff/respondents No.1 to 4.

[2]. Earlier a suit for declaration by way of partition/possession with consequential relief of permanent

injunction was filed by respondent Nos.1 to 4 herein. The said suit was got dismissed as withdrawn with a liberty to file fresh suit on same cause of action vide order dated 26.11.2014. Thereafter fresh suit was filed for possession by way of partition by metes and bounds with consequential relief of permanent injunction in which an application under Order 39 Rules 1 and 2 read with Section 151 CPC was also filed for grant of temporary injunction. Concededly that suit and application was pending consideration before the trial Court for 06.08.2016.

[3]. Learned counsel for respondent Nos.1 to 4/plaintiffs stated that necessity arose for filing the suit for permanent injunction, when petitioners herein started raising construction during vacations. The application was declined by the vacation Judge on 10.06.2016 on the ground that, even though the parties are co-sharers, but it was not specified as to on which portion, the construction was being raised by the defendants. It was also observed that nothing was shown as to how the construction raised by the defendants would amount to ouster of the plaintiffs from the land in question. The efficacious remedy was already available with the plaintiffs, which was also resorted to by way of filing suit for partition, therefore, construction raised by one of the co-sharer was not considered to be detrimental to the interest of plaintiffs, nor the same amounted to ouster of

other co-sharers. So interference was not warranted by the trial Court and temporary injunction was refused.

[4]. The lower Appellate Court granted injunction in favour of the plaintiffs on the premise that the defendants were already in possession of excess of their share and have constructed rooms. The only space available to the plaintiffs was in the form of suit land marked by red colour in the site plan. This area was assessed to be less than the entitlement of the plaintiffs and, therefore, it was observed that the construction, if any, raised by the petitioners would definitely amount to ouster of the co-sharers/plaintiffs and would also be detrimental to their interest. The plea of private partition as propounded by the petitioners was not entertained in view of the fact that no such implementation was given effect in the revenue record. Parties were found to be co-sharers, having defined shares in the property measuring 1 *Kanal* 13 *Marlas* left after acquisition of remaining land of the co-sharers.

[5]. Petitioners derived their title on the basis of sale deed from Sunder and Naresh Kumar, who in turn purchased the same from Jagbir Singh, i.e. the original co-sharer in land measuring 1 *Kanal* 13 *Marlas*. Whether Jagbir Singh had sold area more than his entitlement would be gone into by the trial

Court. Evidently, the petitioners have already raised the construction over the portion as shown by red colour in the site plan and construction is still going on. In such situation, petitioners can be asked to file undertaking before the trial Court, that in the event of acceptance of partition amongst different co-sharers and if, this area finally falls to the share of other co-sharers or the plaintiffs, then they would remove the *malba* without claiming any demur or compensation and would give peaceful possession to the rightful claimant. However the construction, if any, found on more than the excess area would be dealt with by the trial Court in accordance with law. Learned counsel for the petitioners submitted that the petitioners can be put to certain conditions for protecting their construction and possession at this stage.

[6]. At this stage, an undertaking by the petitioners would suffice to dispose of the petition. Petitioners shall furnish an undertaking before the trial Court within a period of one month from the date of receipt of copy of this order, by mentioning the facts that in case the partition is finally decided and the area in question comes to the entitlement of the plaintiff/respondent Nos.1 to 4, the petitioners would either remove the construction of their own or would not claim any compensation in lieu thereof.

[7]. In view of aforesaid, this revision petition is disposed of.

August 09, 2016
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No