

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

CR No.5413 of 2016(O&M)

Date of decision:5.9.2016

Sunil

....Petitioner

VERSUS

Satish @ Kuria Ram and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Nipun Vashist, Advocate for the petitioner.

REKHA MITTAL, J.

CM No.17725-CII of 2016

Allowed as prayed for.

Document (Annexure P-4) is taken on record.

CR No.5413 of 2016

The present petition has been directed against order dated 05.08.2016 passed by the Additional District Judge, Rewari whereby the appeal preferred by Satish – respondent No.1/defendant against order dated 26.08.2013 passed by the trial Court allowing application for interim injunction filed by the petitioner along with co-plaintiffs was allowed.

Counsel for the petitioner has submitted that as Satish – respondent No.1, a co-sharer of land comprising Khasra No.23/1, wants to raise construction over a specific portion of said khasra number without partition of the joint land, he was rightly restrained from raising construction by the trial Court but the Court in appeal committed a gross error by reversing the order of the trial Court. It is further argued that every co-sharer has a right to use the joint property in a husband like

manner inconsistent with the rights of other co-sharer. Another submission made by counsel is that there is nothing on record suggestive of the fact that respondent No.1 is in exclusive possession of any part of the joint land on the basis whereof he can assert his right to raise construction over any specific area subject to adjustment of rights of the parties at the time of partition.

I have heard counsel for the petitioner, perused the paper-book particularly the order passed by the trial Court as well as order impugned.

The Court of appeal in para 8 of the impugned order has adverted to the report dated 07.08.2013 submitted by Sh. Ajay Singh, Advocate, appointed as a local commissioner. A relevant extract from para 8 is quoted hereinbelow for ready reference:-

“8....The report submitted by the Local Commissioner prima- facie shows that different co-sharers have been in possession of the specific portions of the suit property whereupon construction already stand raised by them. The respondents no.1 to 3 are also shown to be in exclusive possession of the portion situated towards western-southern side of the disputed portion. The defendant No.1 has placed on file three different site plans showing the properties which are jointly owned and possessed by all the co-sharers whereupon constructions already stand raised by the co-sharers upon specific portions of the suit property as shown in different colours in the site plans. Respondents no.1 to 3 have also not specifically denied that they have been in possession of specific portion of the land in question whereupon construction already stands raised by them. The portion in possession of respondents no.1 to 3 has been shown in saffron colour in the site plan filed by the appellant alongwith the written statement. The appellant is also shown to be in separate possession of the joint land as shown in blue colour in the site plan. When respondents No.1 to 3 have already raised the construction over the specific portion of the joint land without getting it partitioned by metes and bounds they cannot be allowed to restrain other co-sharers from raising construction upon specific portion of the joint land which may be in their exclusive possession. Of course, any construction raised

by any of the cosharers without getting the joint land partitioned by metes and bounds would be subject to the adjustment at the time of final partition and removal without any demur if found on any portion in excess of their share.”

Counsel for the petitioner is not in a position to controvert the observations made by the Court of appeal on the basis of a report submitted by local commissioner appointed by the Court. There is nothing on record suggestive of the fact that the petitioner has challenged the report dated 07.08.2013 in any respect whatsoever. If the petitioner along with his co-plaintiffs has already raised construction over a portion of the joint land in their possession, the petitioner cannot seek an equitable relief in view of the maxim ‘he who seeks equity must do equity’. Counsel for the petitioner has not advanced any meaningful arguments to dispute exclusive possession of respondent No.1 out of land jointly owned by co-sharers including respondent No.1. This apart, a co-sharer in exclusive possession of the joint land has the right to raise construction but subject to adjustment of rights of the parties at the time of final partition. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed. However, nothing stated in this order shall be construed as an expression of opinion on merits of the case nor would cause prejudice to either of the parties at the time of final disposal of the suit.

SEPTEMBER 5, 2016
‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no