

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.6484 of 2016 (O&M)
Date of decision:28.09.2016

Inderjit Verma

... Petitioner

Vs.

Sukhninder Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajiv Joshi, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The petitioner-defendant is aggrieved of the impugned orders dated 17.09.2015 (Anneuxre P-9) and 15.07.2016 (Annexure P-10), whereby, the application at the instance of the respondent-plaintiffs seeking ad interim relief filed in a suit for permanent injunction, has been allowed.

Mr. Rajiv Joshi, learned counsel appearing on behalf of the petitioner-defendant submit that both the Courts below have not appreciated the fact that prayer made in the application with regard to alleged restraint order was not falling within the parameters of Order 39 Rules 1 and 2 of Code of Civil Procedure(hereinafter referred to as "CPC"). The suit for injunction at the behest of co-sharer against a co-sharer is not maintainable and remedy lies elsewhere. This aspect has totally been ignored by both the Courts below, thus, there is illegality and perversity in the orders under challenge.

I have heard learned counsel for the petitioner-defendant and

appraised the paper book and of the view that in view of the principles culled out by the Full Bench of this Court in **Bhartu vs. Ram Sarup 1981 PLJ 204** and reiterated by a Division Bench of this Court in **Bachan Singh vs. Swaran Singh 200(3) RCR Civil 70**, co-sharer cannot raise construction until and unless, the property in dispute is partitioned. The instant case is of such a kind where the defendant cannot raise the construction on the land, which has more market value and close to the main road. The remedy, if any, in such circumstances, particularly for the defendant is to seek partition. No ground is made out for interference in the impugned order.

In my view, the Courts below have rightly allowed the application, aforementioned after complying the provisions of Order 39 Rules 1 and 2 CPC.

Accordingly, the revision petition stands dismissed.

The petitioner is at liberty to take all possible pleas which shall be matter of defence in the pending suit.

Nothing observed herein-above shall be construed as an expression of opinion on the merits of the pending suit.

(AMIT RAWAL)
JUDGE

September 28, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No