

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.752 of 2016 (O&M)

Date of decision: 3.2.2016

Darshana Devi

.....Petitioner(s)

Versus

Sushil Kumar

.....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE DARSHAN SINGH

* * *

Present: Mr. Vishal Aggarwal, Advocate for the petitioner.

Darshan Singh, J.

1. The present revision petition has been directed against the order dated 12.6.2015 passed by the learned Additional Civil Judge (Senior Division), Pathankot and the order dated 7.11.2015 passed by the learned District Judge, Pathankot whereby the application filed by the plaintiff-petitioner under Order 39 Rules 1 and 2 of Code of Civil Procedure, 1908 (hereinafter called 'the CPC') for grant of ad interim injunction has been dismissed.

2. The plaintiff-petitioner filed the suit for permanent injunction restraining the defendant-respondent from raising any sort of structure/building/shed temporary or permanent in the suit land detailed and described in the head note of the plaint situated at village Malpur Tehsil Pathankot until the same is partitioned by metes and bounds.

3. As per the case of the plaintiff-petitioner, she is co-owner in joint possession of the land in dispute. The same has not been

partitioned amongst the recorded shareholders. The defendant had purchased only 4 marlas of land from co-owner Karan Singh. The defendant intends to dispossess the plaintiff forcibly from the site in dispute. Hence, this suit.

4. The suit as well as the application for ad interim injunction has been contested by the respondent on the ground, inter alia, that the claim of the plaintiff to be in possession of the disputed portion mark ABCD is false. She wants to encroach upon the said area on the basis of false plea. She wants to oust the defendant from the suit land and wants to purchase his share.

5. The application for ad interim injunction moved by the petitioner was dismissed by the learned trial Court vide impugned order dated 12.6.2015. The petitioner preferred the appeal against that order. The same was also dismissed by the learned District Judge, Pathankot, vide order dated 7.11.2015. Hence, this revision petition.

6. I have heard Mr. Vishal Aggarwal, learned counsel for the petitioner and have meticulously perused the paper book.

7. Learned counsel for the petitioner contended that by raising the construction in the joint land, the respondent wants to change the nature of the land which is not permissible and the application for ad interim injunction moved by the petitioner has been wrongly dismissed.

8. I have duly considered the aforesaid contentions.

9. The application for ad-interim injunction moved by the petitioner has been dismissed by the learned trial Court and appeal

against that order has also been dismissed by the learned District Judge, Pathankot. The Hon'ble Supreme Court in case **Skyline Education Institute (India) Private Ltd. Versus S.L.Vaswani and another AIR 2010 SC 3221** has laid down that where the order of the trial Court rejecting a prayer for temporary injunction is based on objective consideration of material on record, the Appellate Court is not to interfere because different view was possible. In the instant case, the concurrent orders have been passed by both the learned Courts below. Learned counsel for the petitioner has not been able to point out any legal defect in the impugned orders.

10. This fact is not disputed that the respondent is also a co-sharer in the suit property. The suit property has not been partitioned so far by metes and bounds. Learned counsel for the petitioner has contended that by raising the construction, defendant wants to change the nature of the suit property from agriculture land to the constructed property. This plea raised by the learned counsel for the petitioner is against the record. Learned District Judge has categorically mentioned in the impugned order dated 7.11.2015 that the nature of the land in dispute comprised of Khasra No.2/5 and 6/1/1 has been shown as *gair mumkin* house and plot. So, there is no material to show that the land in dispute is an agricultural land, rather some of the joint land is already under construction. Moreover, the Division Bench of this Court in case **Bachan Singh versus Swaran Singh 2000 (3) PLR 416** has laid down that mere construction or improvement in the common property does not amount to ouster of the other co-sharers. The respondent who is a

co-sharer in the suit property has a right to enjoy the joint land in a husband like manner and no restraint can be put on his right to use the suit property.

11. Thus, I do not find any illegality in the consistent findings of the learned Courts below.

12. Consequently, no case is made out for any interference by this Court in the impugned orders by exercising the extra ordinary supervisory powers under Article 227 of the Constitution of India.

13. Resultantly, the present petition is without any merit and the same is hereby dismissed.

February 03, 2016
ps

(DARSHAN SINGH)
JUDGE