

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

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CR 8716 of 2015
Date of decision: 22.07.2016

Rameshwar and another

..... Petitioner

Versus

Sadhu Ram

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Sandeep Bansal, Advocate
for the petitioners

Mr. Gurinder S Sandhu, Advocate
for the respondent

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present petition has been directed against order dated 04.05.2015 (Annexure P3) passed by the Additional District Judge, Sangrur whereby the appeal preferred by the respondent against order dated 29.01.2015 (Annexure P1) passed by the Additional Civil Judge (Senior Division) Moonak (hereinafter to be referred as 'the trial Court') has been allowed and the application filed by the respondent for grant of interim injunction has been allowed.

Sadhu Ram-respondent filed a suit for injunction in respect of land measuring 118 kanals 15 marlas, situated at Bhullan, Tehsil Moonak,

District Sangrur, detailed in head note of the plaint, with the plea that the same is in joint possession of plaintiff and defendants as co-sharers and has not been partitioned. It was prayed that the petitioners (defendants therein) be restrained from selling specific khasra numbers of suit property, raising construction after filling the land and also changing nature thereof. Along with the suit, an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure (in short, CPC) was filed that came to be dismissed by the trial Court vide order dated 29.01.2015 by relying upon judgments of this Court ***Jai Karan Sharma vs. Ram Kumar, 2009 (1) RCR (Civil) 546 (P&H)*** and ***Joginder Singh and others vs. Ajit Singh 2010 (2) CCC 179 (P&H)***. It was further held that from the law laid down in various pronouncements, it is clear that if a co-owner in exclusive possession of the property raises construction then the other co-owner cannot restrain him from so doing. However, a rider has been placed upon such a construction that it would be subject to partition and co-sharer who had raised construction could not at a later stage, at the time of partition, claim any exclusive right over the property on which the construction was so raised by him. However, it was held that the defendants are in exclusive possession of the suit property and as such they cannot be restrained by the plaintiff from raising construction, but such a construction would be purely at the risk of the defendants subject to final partition.

The Court of appeal set aside the order passed by the trial Court by holding that the plaintiff in his plaint has mentioned that the defendants are in possession on the front side adjoining to road. Even then the plaintiff has already filed an application for partition and rights of co-sharers are to be finally decided in partition.

Counsel for the petitioners has submitted that the respondent/plaintiff in para 5 of the plaint raised a categorical plea that the defendants without getting the land partitioned want to sell specific numbers; want to fill earth on the land adjoining the road front for making construction and change nature of the land in dispute and they have no right to do so. In response thereto, the petitioners in para 5 has raised a plea that the suit property is situated in *abadi* area and there are many residential houses constructed; the plaintiff never raised objection regarding construction that exists in total khata of the suit property. A person who is in exclusive possession can make construction in area which is under his exclusive possession. Further, a plea was raised that the defendants are in possession over the property which is purchased by them vide sale deed 704 dated 13.12.2014 and the plaintiff wants to harass them as he has grudge with regard to purchase.

It is further argued that the learned trial Court, on a detailed consideration of the factual and legal aspects involved rightly recorded a finding that the respondent/plaintiff has no cause to obtain an injunction against the defendants, restraining them from raising construction over land in their exclusive possession being co-owners of the land in dispute. The Court of appeal without noticing any perversity in the order passed by the trial Court has set aside the order which reflects non-application of mind and ignoring settled principles that an order passed by the trial Court while disposing an application for interim injunction cannot be interfered with unless the same is found to be perverse or/and passed by disregarding any document having material bearing on merits of the stay application.

Counsel for the respondent/plaintiff has supported the

impugned order. However, he has expressed his apology for a wrong statement made on 30.05.2016 that the plaintiff filed an application for amendment of the plaint and the same has been allowed by the Court. Counsel has fairly conceded that the application filed by the respondent/plaintiff to amend the averments raised in para 5 of the plaint etc. is still pending consideration before the trial Court.

As the respondent/plaintiff has himself admitted possession of the defendants/petitioners on front of the road at the spot and counsel for the respondent has not disputed that the petitioners are co-owners of the land in question, no fault much less illegality can be noticed in the order passed by the trial Court that a co-owner in exclusive possession of the joint land cannot be enjoined from raising construction over land in his exclusive possession but he cannot claim a better right in said land on the basis of construction at the time of partition of the joint land. Similarly, no injunction can be granted against a co-owner from selling a particular part of the joint land or by way of specific khasra number because sale by a co-owner can not give any better right to the vendee than a co-owner had in the joint property. Equally settled is that sale of joint land by a co-owner of specific khasra number(s) would be deemed to be a sale of share and nothing more. In this view of the matter, I find merit in contention of the petitioners that the order passed by the appellate Court setting aside the order of the trial Court in exercise of its limited jurisdiction is manifestly illegal and cannot be allowed to sustain.

For the foregoing reasons, the petition is allowed, the impugned order is set aside and the order passed by the trial Court is restored. No order as to costs.

However, nothing stated in this order, shall cause prejudice to either of the parties at time of final disposal of the suit on merits.

(Rekha Mittal)
Judge

22.07.2016
mohan bimbura