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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.R.P. 113/2016

RAJJO & ANR

..... Petitioners

Through Mr.S.S.Panwar and Ms.Nivedita
Panwar, Advocates.

versus

SISO DEVI & ORS

..... Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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01.09.2016

CM No. 28028/2016 (exemption)

Exemption is allowed subject to all just exceptions.

C.R.P. 113/2016 and CM No.28209/2016 (stay)

1. By the present petition, the petitioners seek to impugn the judgment dated 11.05.2016 whereby the application filed by the petitioners under Order 7 Rule 11 CPC was dismissed.
2. The suit is filed by respondents No.1 and 2 seeking the relief of a decree of permanent injunction to restrain the defendants/petitioners from carrying out/permitting any unauthorised construction in the suit property in Sukhdev Vihar, New Delhi. A decree of mandatory injunction is also sought against the defendants directing the defendants to remove/demolish unauthorised construction carried out by the defendants No.1 and 2 i.e. the petitioners.

3. Learned counsel for the petitioners relies upon the judgment of the Punjab and Haryana High Court in the case of ***Bachan Singh vs. Swaran Singh, 2000 (3) RCR (Civil) 70*** to contend that an owner who is out of possession of the suit property cannot seek an injunction against the co-owner who is in possession of the suit property and the only remedy available to such a co-owner is to seek the relief of partition of the suit property. He submits that the suit would be hit by Section 41(h) of the Specific Relief Act.

4. The trial court has dismissed the application relying on various judgments of the Patna High Court, Lahore High Court and Allahabad High Court to hold that a joint owner of a private property has no right to construct on the joint property.

5. A perusal of the plaint shows that the grievance of the plaintiffs/respondents No.1 and 2 is that about 150 sq. yards portion of the suit property has been demolished and the petitioners are erecting columns to carry out unauthorised construction in the suit property. The concerned municipal corporation, namely, respondent No. 3 has also been impleaded as a party.

6. The Punjab and Haryana High Court in the case of ***Bachan Singh vs. Swaran Singh(supra)*** had concluded as follows:-

“15. On a consideration of the judicial pronouncements on the subject, we are of the opinion that:

(i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the

property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession.

(ii) Mere making of construction or improvement of, in the common property does not' amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to' prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which, is detrimental to his interest.

In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction restraining the co-owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner.”

7. Hence, even as per the judgment relied upon by the learned counsel for the petitioners, a co-owner can seek injunction in case the act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of the co-owner out of possession. An injunction can also be sought in case the value or the utility of the property is diminished. As per the averments in the plaint, it is contended that the petitioners are seeking to construct unauthorised construction in the area in question. The petitioners would have no right to carry out such unauthorised construction. Carrying out an unauthorised construction would cause prejudice and diminish the value of the property and harm the other co-owner.

8. Needless to add that while considering an application under Order 7 Rule 11 CPC, the court is only to look at the averments made in the plaint

and not at the defence of the defendants/petitioners. On the mere averments in the plaint taking them to be correct, it cannot be said that the relief sought by the respondents No.1 and 2 is barred by law.

9. There is no merit in the petition and the same is dismissed.

JAYANT NATH, J

SEPTEMBER 01, 2016
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