

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

**CR No. 3516 of 2016
DECIDED ON: JANUARY 30, 2017**

HARISH KUMAR

....PETITIONER

VERSUS

SANTOSH & ORS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Roopak Bansal, Advocate
for the petitioner.

JASPAL SINGH, J

By virtue of instant petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of order dated January 27, 2016 (Annexure P-2) (wrongly typed as January 21, 2016 in the head note) passed by learned Civil Judge (Jr. Division), Rewari whereby, an application filed by the petitioner under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure (for short 'Code'), has been dismissed as well as to the order dated March 28, 2016 (Annexure P-4) passed by learned Additional District Judge, Rewari whereby, an appeal preferred against the afore-said, has been dismissed.

The contention of learned counsel for the petitioner is that the petitioner alongwith proforma respondents are co-sharers in the suit land

comprising of rectangle No. 31 killa No. 12/12/1 whereas, respondents No.1 to 3 have no right, title or interest in any part of the afore-said khasra nos. Though, they are alleged to have purchased some part of the land comprising in kila No. 12/2/1. At the most, they have become co-sharers and until or unless, the joint land is partitioned by metes and bounds, the contesting respondents have no right to change the nature of the suit property. In case, they succeeded in raising the construction on specific portion of the suit land without getting it partitioned, petitioner and proforma-respondents are likely to suffer an irreparable loss and injury, which can not be compensated in terms of money. He further contends that both the courts below while dismissing the afore-said application as well as appeal have ignored the fact that the petitioner as well as the proforma respondents cannot be compensated in respect of the injury, they would suffer in case the construction is raised over a specific portion of the joint property.

This Court has given an anxious thought to the afore-said submissions made by learned counsel for the petitioner but does not find any legal or factual weight therein.

Through the instant suit, petitioner has claimed himself to be the owner in possession of land comprised in rectangle no. 31, kila no. 12/2/1, on the basis of registered sale deed dated September 03, 2004. Neither any site plan nor copy of the sale deed has been seen in the light of the day. However, the jamabandi pertaining to the year 2010-2011 has been referred to by both the courts below, according to which, petitioner has been recorded as a co-sharer to the extent of 63/5590 share in the joint khewat no. 220 measuring 263 kanal 6 marla. None of the entries appearing in the jamabandi depict the exclusive

possession of the petitioner on any parcel of the joint land. Whereas, the contesting respondents have been recorded in exclusive possession. Otherwise also, it is pretty settled by now that the co-sharer in exclusive possession is entitled to continue his possession over the parcel of joint property till the same is partitioned by metes and bounds. At the same time, a co-sharer in exclusive possession can also raise the construction though, the construction so raised by him would be at his risk and costs as well as subject to the partition. But no such injunction can be granted in favour of a person who is neither in exclusive possession of any specific portion of the suit property nor has produced the requisite documents on record.

Accordingly, this court is of the considered view that both the courts below have exercised the discretion in a judicious manner. Thus, this court is of the considered view that the orders passed by both the courts below are absolutely in consonance with the evidence available on record as well as legal principles governing the grant or decline of injunction.

Dismissed.

JANUARY 30, 2017
sham

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*