

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CR No.3406 of 2017
Date of decision:11.5.2017**

Bhim Singh

...Petitioner

Versus

Shamsher and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Ajay Jain, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Present civil revision petition, at the hands of defendant No.2, filed under Article 227 of the Constitution of India, is directed against the impugned order dated 27.3.2017 (Annexure P-2), whereby civil miscellaneous appeal of the plaintiffs was allowed, granting interim injunction, setting aside the order dated 18.11.2016 passed by the learned trial Court, dismissing an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure ('CPC' for short), filed by the plaintiffs-contesting respondents in their suit for injunction.

Heard learned counsel for the petitioner.

A bare combined reading of both the impugned orders contained in Annexures P-1 and P-2 passed by the learned courts below will make it crystal clear that the learned trial Court misdirected itself, while dismissing the application of the plaintiffs under Order 39 Rules 1 and 2

read with Section 151 CPC for interim injunction in their suit for permanent injunction, vide its order dated 18.11.2016 (Annexure P-1). The learned Additional District Judge was well justified, while allowing the civil miscellaneous appeal of the plaintiffs, granting them interim injunction, failing which they would have suffered irreparable loss and injury and their suit for permanent injunction itself would have been rendered infructuous. Having said that, this Court feels no hesitation to conclude that the learned Additional District Judge was well within his jurisdiction to pass the impugned order and the same deserves to be upheld.

Facts of the case are hardly in dispute. Parties to this litigation are co-sharers. However, when the defendants including the present petitioner were intending to create third party interest in a particular part of unpartitioned and joint suit property, it became the compulsive necessity of the plaintiffs to file the suit for permanent injunction, restraining the defendants from alienating, transferring, mortgaging or changing the nature of suit land or raising any construction on a specified portion until the suit land was partitioned by meets and bounds. Ownership of plaintiffs is not in dispute.

Learned counsel for the petitioner has pointed out that separate partition proceedings before the appropriate authority were also pending between the parties. In such a situation, defendants including the present petitioner ought to have stayed their hands from creating third party interest by alienating any part of the suit property or raising construction thereon so as to avoid any unwarranted and avoidable prejudice to the plaintiffs.

However, defendants-petitioner were bent upon to sell a particular piece of

land. Under these facts and circumstances of the case, it can be safely concluded that the learned Additional District Judge committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

In case, any defendant is permitted to sell a particular piece of land, out of unpartitioned and joint property owned by several owners and the land intended to be sold by the defendants happens to be most valuable piece of land out of the unpartitioned land, it would certainly cause serious prejudice to the other co-sharers. In such a situation, defendant cannot be permitted to create third party interest, while proceeding on a malafide and clever approach, with a view to achieve his ulterior motive to the detriment of plaintiff, particularly when the partition proceedings are already pending between the parties.

Once the learned trial Court failed to appreciate these material aspects of the matter, a serious prejudice was likely to be caused to the plaintiffs by the order passed by the learned trial Court, dismissing their application under Order 39 Rules 1 and 2 read with Section 151 CPC. The learned Additional District Judge rightly set aside the order dated 18.11.2016 passed by the learned trial Court, while allowing the civil miscellaneous appeal of the plaintiffs, because of which the impugned order dated 27.3.2017 deserves to be upheld.

The above-said view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

**1. Gangubai Babiya Chaudhary and others Vs.
Sitaram Bhalchandra Sukhtankar and others etc.,**

- 1983 (4) SCC 31 (SC);
2. T.Lakshmipathi and others Vs. P.Nithyananda Reddy and others, 2003 (5) SCC 150 (SC);
3. Bhartu Vs. Ram Sarup, 1981 PLJ 204 (FB) (P&H);
4. Daulat Ram Vs. Dalip Singh and others, 1989 (1) RLR 523 (P&H);
5. Nazar Mohd. Khan Vs. Arshad Ali Khan and others, 1996(1) PLR 334 (P&H);
6. Ram Niwas Vs. Jai Ram @ Tej Ram, 2000 (3) RCR (Civil) 738 (P&H);
7. New India Construction C..Ltd and others Vs. Desh Raj and others, 2007(1) CCC 801 (P&H);
8. Ram Chander Vs. Bhim Singh and others, 2008(3) RCR (Civil) 685 (P&H).

The law laid down by the Hon'ble Supreme Court in **T.Lakshmipathi**, case (supra), which can be gainfully followed in the present case, reads as under:-

C. Co-owners - Law with regard to property held by several co-owners :-

(i) Where any property is held by several co-owners, each co-owner has interest in every inch of the common property, but his interest is qualified and limited by similar interest of the other co-owners.

(ii) One co-owner cannot take exclusive possession of the property nor commit an act of waste, ouster or illegitimate use, and if he does so he may be restrained by an injunction.

(iii) Co-owner may, by an arrangement, expressed or implied, with the other co-owners, possess and enjoy any property exclusively - Such a co-owner can also protect his possession against the other co-owners and

if he is dispossessed by the latter, he can recover exclusive possession. 1966 Supp SCR 280 relied.

In view of the above-said peculiar facts and circumstances of the case noticed hereinabove, it is held that given fact situation of the present case and also the interest of justice demands granting interim injunction in favour of the plaintiffs. In case the misconceived plea raised on behalf of the defendants-petitioner is to be accepted, plaintiffs-respondents would be non-suited at the very outset, without granting them an opportunity to prove their pleaded case by leading cogent and convincing evidence. Further, each and every case is to be decided as per its own peculiar facts, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order, which may warrant interference, at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. The impugned order has been found based on true facts of the case and it has also been passed, strictly in accordance with law. The impugned order is supported by sound reasons, because of which no fault can be found with it and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the

considered view that the instant civil revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail.

No case for interference has been made out.

Resultantly, with the above-said observations made, the present civil revision petition stands dismissed, however, with no order as to costs.

11.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No