

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

**CR No.3913 of 2015(O&M)
Date of Decision: 07.09.2017**

Jagir Singh and othersPetitioners

Versus

Yadwinder Kumar and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Som Nath Saini, Advocate
for the petitioners.

Mr. S.K. Jain, Advocate and
Mr. Aasheem Jain, Advocate
for respondents No.1 to 5 and 8 to 14.

RAJ MOHAN SINGH, J.

CM No.18434-CII of 2017

Reply and accompanying documents filed in CM
No.15012-CII of 2016 are taken on record subject to all just
exceptions.

Application stands disposed of.

CM No.15012-CII of 2017

Reply filed on behalf of respondents No.1 to 5 and 8 to
14 is taken on record.

Application stands disposed of.

Main case

[1]. Petitioner has assailed the order dated 15.04.2015 passed by Additional District Judge, SAS Nagar, Mohali maintaining the order dated 30.09.2013 passed by Civil Judge (Junior Division), Dera Bassi.

[2]. Plaintiffs/petitioners filed a suit for permanent injunction, restraining the defendants from changing the nature of the suit property by way of raising any construction or by removing the earth on the suit property. An application under Order 39 Rules 1 and 2 read with Section 151 CPC for grant of *ad interim* injunction was also moved along with the suit.

[3]. Defendants No.1 to 5 filed their written statement and contested the suit.

[4]. The application for *ad interim* injunction was dismissed by the trial Court on 30.09.2013 on the ground that defendant No.5 has raised the construction upto 4th floor over khasra Nos.25//21 and 25/22 and therefore, golden principles for grant of *ad interim* injunction were not satisfied.

[5]. Plaintiffs/petitioners filed an appeal before the Lower Appellate Court on number of grounds that they are co-owners to the extent of land purchased by them from the earlier owners and are also tenants qua the other owners of the land comprised in khewat/khatauni Nos.17 to 62. Partition

proceedings have not been finalized as yet.

[6]. Lower Appellate Court dismissed the appeal vide the impugned order dated 15.04.2015. That is how, the present revision petition came to be filed.

[7]. I have heard learned counsel for the parties.

[8]. Learned counsel for the petitioners vehemently submitted that the construction, if any, raised on the spot shall be subject to final outcome of the suit and in the event of partition of the land, constructed portion of the land if comes to the share of the petitioners, then respondents will not claim any right qua the construction or remove the same on their own risk and responsibility. Learned counsel further submitted the respondents be restrained from raising further constructions beyond the construction which has come in existence as on date. By referring to accompanying documents attached with CM No.15012-CII of 2016, learned counsel tried to rely upon the forgery committed in the case before the Assistant Collector Second Grade/Naib Tehsildar, Dera Bassi in respect of case file number and the nature of proceedings conducted before the revenue officers.

[9]. Learned counsel submitted that the plaintiff being in possession of the land on the strength of sale deed was entitled to *ad interim* injunction till final decision of the suit. Learned

counsel relied upon ***T. Lakshmipathi and others vs. P. Nithyananda Reddy and others, (2003) 5 SCC*** to contend that one of the co-sharer cannot take exclusive possession of the property, nor committ an act of waste, ouster or legitimate use of the land as by doing so, he would render the whole of the property unfit for the use of other co-owners and great prejudice would be caused to the co-sharers as the act of one of the co-sharer would amount to ouster of others without there being any exclusive possession of other co-owners.

[10]. Learned counsel also submitted that co-owner cannot raise construction before getting the land partitioned as it would affect the rights of other co-owners. Defendants cannot be permitted to raise construction over a specified portion of joint land so as to deprive other co-sharers from the use of joint land. By doing such act, defendants would violate the concept of co-sharership. In the aforesaid context, learned counsel referred to ***Rishal Singh and ors. vs. Shri Bhagwan & Anr., 2007(5) RCR (Civil) 393.***

[11]. Learned counsel emphasized that at the stage of grant of temporary injunction only three principles are to be appreciated i.e. existence of prima facie case, balance of convenience and irreparable loss likely to caused in the event of non-grant of *ad interim* injunction in favour of the plaintiff. By

relying upon ***Maharwal Khewaji Trust (Regd.) Faridkot vs. Baldev Dass, (2004) 8 Supreme Court Cases 488***, learned counsel ultimately submitted that order of *status quo* was just and proper in the facts and circumstances of the case.

[12]. On the other hand, learned counsel for the respondents opposed the prayer made by learned counsel for the petitioners on the ground that para Nos.4 and 5 of the plaint are self explanatory in the context of rights of the co-sharers and the construction was in progress. In the written statement filed by the defendants, the factum of purchase of the suit land by the defendants was highlighted. Defendant No.5 has purchased big chunk of land, wherein defendants are raising construction of floors which was started way back in the year 2012 and the construction had already been completed upto 4th floor over khasra Nos.25//21 and 25//22.

[13]. The factum of construction of floors upto 4th floor over khasra Nos.25//21 and 25//22 has been noticed by the Courts below in declining *ad interim* injunction in favour of the plaintiffs/petitioners. The said fact has not been specifically denied by the plaintiffs either at the time of raising arguments and filing written statement by the defendants before the trial Court. The case of the plaintiffs/petitioners was resisted on the plea of co-sharership and till partition of the land, restraint was

sought against the defendants from raising the construction on undivided share of the land.

[14]. Learned counsel for the respondents submitted that partition has already been conducted, but some of the co-sharers have challenged the same. There was a change effected in terms of khasra girdawari in favour of the respondents.

[15]. Before embarking upon the merits of the case, it would be relevant to highlight the rights and liabilities of the co-sharers which have been defined in **Sant Ram Nagina Ram Vs. Daya Ram Nagina Ram, AIR 1961 Punjab 528**. The ratio of the aforesaid judgment was further reiterated by Full Bench of this Court in **Bhartu Vs. Ram Sarup, 1981 PLJ 204** and subsequently by another Full Bench of this Court in **Ram Chander Vs. Bhim Singh and others, 2008(3) RCR (Civil) 685**.

[16]. Mere construction on a common land would not amount to ouster of other co-sharers and a co-sharer cannot seek injunction against the other co-sharer from raising construction. The only remedy available to the aggrieved co-sharer is to file a suit for partition. The aforesaid view was also endorsed by Division Bench of this Court in **Bachan Singh Vs. Swaran Singh, 2003(3) RCR (Civil) 70**, wherein on the basis of judicial

pronouncements on the subject matter, following opinion was given:-

“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.”

[17]. Since the respondents have already raised construction upto 4th floor over khasra Nos.25//21 and 25//22, the golden principles for grant of *ad interim* injunction in terms of Order 39 Rules 1 and 2 are to be tested in the context of existence of *prima facie* case, balance of convenience and irreparable loss likely to be suffered by the plaintiffs in the event of not granting any interim relief. Since the respondents have already constructed construction upto 4th floor over khasra Nos.25//21, 25//22 and the construction is in progress, therefore, availability of building material and likely damage in the event of restraint order would bring the case to be *prima facie* case in favour of the respondents. The balance of convenience would also be in favour of the respondents and restraint order would definitely cause irreparable loss to the defendants. A co-owner out of possession can only seek partition. For seeking injunction, plaintiffs are required to show that by an act of defendants the value and utility of the property would be diminished and the co-sharers out of possession can be prevented by way of injunction on such a diminution of the value and utility of the property and would also to show that the acts of co-owner in possession were detrimental to the interest of other co-sharers. In view of ratio laid down in **Bachan Singh's case (supra)**, defined grounds are to be proved for seeking injunction in such an eventuality.

[18]. In view of ratio laid down in **Jangir Singh Vs. Naranjan Singh and others, 2015(1) RCR (Civil) 49**, equal and efficacious remedy available to the plaintiff is to seek partition of the land and no injunction can be granted against the defendants/co-sharers. The maintainability of such a suit would be on questionable note.

[19]. In view of above, I do not find any error of jurisdiction in the orders passed by the Courts below. This revision petition is accordingly dismissed.

07.09.2017

prince

Whether Reasoned/Speaking

Whether Reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No