

In the High Court of Punjab and Haryana at Chandigarh

**CR-5894 of 2017(O&M)
Date of Decision: 1.9.2017**

Raghbir Singh and another

---Petitioners

versus

Balbir Kaur and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Mansur Ali, Advocate
for the petitioners.**

Rekha Mittal, J.

The present petition directs challenge against order dated 25.7.2017 passed by the Additional District Judge, Hoshiarpur whereby appeal preferred by the respondents/defendants against order of status quo granted by the trial court in favour of the petitioners has been allowed and the application for interim injunction has been dismissed.

Counsel for the petitioners has submitted that the petitioners are co-owners in the land, subject matter of the suit and they have already filed petition for partition of the joint land, pending before the competent authority. It is further argued that the petitioners have filed suit for permanent injunction restraining the respondents/defendants from raising any construction over the suit property or dispossessing the plaintiffs from joint possession or changing its nature till the same is partitioned by metes and bounds. The trial court passed order dated 19.3.2016 whereby the

parties were directed to maintain status quo regarding existing position at spot till final disposal of the suit. The court in appeal without appreciating the matter in right perspective has set aside the order passed by the trial court and dismissed the application for grant of interim injunction. It is further argued that any construction raised by the petitioners/plaintiffs prior to filing of the present suit cannot affect their right to seek injunction against the respondents qua changing existing position of the joint property. Another submission made by counsel is that it is always expedient in the interest of justice that the parties do not alter the existing status of suit land till adjudication of their respective claims on the basis of evidence to be adduced by them.

I have heard counsel for the petitioners, perused the paper book particularly the order passed by the trial court and the order impugned.

The trial court directed the parties to maintain status quo regarding existing position of the suit property with the observations that contentions of both the sides is a matter of evidence and cannot be adjudicated. Further held that the picture would be clear when both the parties will lead their evidence. Perusal of order of the trial court leaves no manner of doubt that the trial court, in an effort to shirk from its responsibility to pass a reasoned order in the light of contesting contentions of the parties, adopted a short cut method to dispose of the application for stay. On the other hand, the Court in Appeal, on a detailed consideration of the respective submissions made by counsel for the parties has decided the appeal and entitlement of the petitioners to get injunction. Counsel for the petitioners has not disputed factual findings recorded by the Court in Appeal that vendor of the respondents/defendants purchased the property in

the year 1991 and the respondents purchased the same vide sale deed dated 28.10.2014 with specific boundaries having been delivered possession thereof. In the replication filed by the plaintiffs/petitioners they have admitted that in the southern portion of khasra No. 1780/552, there are shops of Gurmail Singh, a co-sharer but not a party to the lis and on the northern half portion there is construction of plaintiffs and the defendants have no concern with the same. In para No. 11, the court has held that any improvement by way of construction in joint land would be subject to partition and the person so raising construction would do so at his peril. Another observation recorded by the Court is that he who seeks equity must do equity. As the plaintiffs have already raised construction on a part of the joint property, they cannot restrain their co-owners in exclusive possession of a part of the joint property from raising construction thereon subject to adjustment of rights of the parties in pending partition proceedings. In view of the above, I do not find any error much less illegality in the order impugned warranting intervention in exercise of limited revisional jurisdiction.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

1.9.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No