

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

**Civil Revision No. 6151 of 2017 (O&M)
Decided on: 12.09.2017**

Devi Singh

.....Appellant

versus

Karambir & Ors.

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Mukul Aggarwal, Advocate
for the petitioner.

Rajbir Sehrawat, J.(Oral)

Challenge in this revision petition is to the order dated 24.07.2017 passed by the trial Court whereby the application for interim injunction filed by the present petitioner-plaintiff was declined and also the order dated 24.08.2017 whereby the appeal filed by him against the order passed by the trial Court was dismissed.

Learned counsel for the petitioner contends that admittedly the property is a joint holding of the plaintiff and the defendant No.1 and therefore the defendant No.1 cannot sell the specific portion of the land or cannot raise or permit to be raised any construction over the suit property. Learned counsel for the petitioner further contends that vide order dated 04.01.2017 the trial court had restrained defendant No.1 from alienating the suit property and also from raising construction on the suit property. However, defendant No.1 sold the suit property to defendants No.4 and 5 despite passing the interim injunction order by the trial Court. In any case it is the submission of the learned counsel for the petitioner that raising construction by defendants No.4 and 5 amounts to ouster of the present petitioner from the joint holding. Therefore, his prayer is that both the Courts below have faulted in dismissing his application and the appeal.

Heard the learned counsel for the petitioner.

This Court does not find any illegality in the orders passed by the trial Court and the lower Appellate Court. The trial Court has recorded in its order that as per the revenue record the plaintiff who is the petitioner here, as well as the defendant, all are recorded in possession of specific khasra numbers, may not be to the extent of their full shares. Therefore, the Courts below have recorded that defendant No.1 was in exclusive possession over the khasra number involved in the present suit. He has further sold it to defendants No.4 and 5 and thereby has only put the defendants No.4 and 5 in his place. This Court finds itself in agreement with the findings of the Courts below.

Otherwise also, it has been well-established by the judgement of this court, which has been relied upon by the trial Court, that if the co-sharer is in exclusive possession of a portion of the joint holding then he can even raise the construction over the land under his exclusive possession, although, such construction would be subject to final partition, if any, resorted to by the parties. Therefore, there is nothing wrong in the orders passed by the Courts below.

Otherwise also, the contention of the learned counsel for the petitioner that he is ousted from the possession of suit property by selling the same in the form of specific khasra numbers cannot be accepted for the simple reason that the trial court has categorically ordered that any sale and any construction raised by the defendants-respondents shall be subject to the partition proceedings and the party raising the construction over the suit property shall be bound to remove the construction without any excuse in

case the property goes to the other party in the partition proceedings. There cannot be a better protection of right of the plaintiff qua the suit property than as has been done in the present case by the trial court. Counsel has also argued that the trial Court has recorded a finding that there has been a mutual settlement between the parties and this finding recorded by the trial Court has prejudiced the case of the present petitioner. This argument of the learned counsel for the petitioner is totally misconceived. The trial court has not recorded any such finding. A bare reading of the relevant para of the order of the trial court makes it clear that only for the purpose of deciding the interim application, the trial Court has said that there is at least a presumption which can be gathered from the revenue record that there might have been some understanding between the parties. The trial Court has also written that the entire matter shall be subject to partition between the parties. This itself shows that the Court has not recorded any such finding regarding the alleged settlement between the parties. This apprehension of the learned counsel for the petitioner is totally unfounded.

However, for the sake of clarification only; it is clarified here that nothing observed in these proceedings shall be construed as a comment on merits of the case.

In view of the above, the present petition is dismissed being devoid of any merit.

12th September, 2017

Manju

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No