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

**Civil Revision No.8579 of 2016
Date of Decision: 24.08.2017**

BALJIT SINGH

.....Petitioner

Vs

KARTAR SINGH & ORS

....Respondents

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

Present: Mr. Sherry K. Singla, Advocate
for the petitioner.

None for the respondents.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 07.05.2016 passed by the trial Court and the order dated 15.11.2016 passed by the lower Appellate Court, whereby the application under Order 39 Rules 1 and 2 CPC was allowed by the trial Court and same was affirmed by the lower Appellate Court thereby restraining the defendant/petitioner from making any construction or changing the nature of the suit property during pendency of the suit.

[2]. Learned counsel for the petitioner submitted that both the parties were co-sharers in the suit property. The suit

property was partitioned by the competent Court of Assistant Collector, 1st Grade, Amargarh. A revision was filed against the said order before the Financial Commissioner, Punjab Chandigarh i.e. ROR No.10-12/14 which was decided on 05.10.2015 and the matter was remanded to the Assistant Collector, 1st Grade for fresh adjudication by giving due opportunities to the parties.

[3]. The order dated 05.10.2015 passed by the Financial Commissioner, Punjab Chandigarh was stayed by this Court in CWP No.26348 of 2015 on 18.12.2015 on the ground that the private respondents never raised any objection in respect of the title, even after appearance before the Assistant Collector, 1st Grade. After approval of mode of partition, the same could not be challenged in the revision petition.

[4]. With the stay operation of the order dated 05.10.2015 passed by the Financial Commissioner, Punjab Chandigarh the order passed by the Assistant Collector, 1st Grade became operative. After the partition, the area which was constructed by the respondents had already fallen to their shares in which they had already raised constructions. The area which came to the share of petitioner is to be utilized by them being in exclusive possession.

[5]. In the present case, while issuing notice of motion following order was passed by this Court:-

“Learned counsel for the petitioner contends that the land in question was partitioned by the Revenue Court. The said order of partition was reversed by the Financial Commissioner and the case was remanded to the Assistant Collector, 1st Grade. The High Court has already stayed the operation of the order of the Financial Commissioner. Respondents were not proved to be in exclusive possession of the suit property. The suit was not maintainable against the defendant-petitioner.

Notice of motion for 23.2.2017.”

[6]. Thereafter learned counsel for the respondents appeared and sought time for arguments on 23.02.2017 and the case was adjourned for 19.04.2017 and thereafter for 23.08.2017. None appeared on 23.08.2017 and the case was adjourned for today. Even today also, none has come present on behalf of the respondents.

[7]. In view of attending facts and circumstances of the case, I deem it appropriate to vacate the interim order granted by the Courts below. Petitioner shall be entitled to utilize the area so earmarked to him in the partition proceedings, however construction, if any, raised shall be subject to the ultimate decision of the trial Court and the construction, if any, shall be on the risk and responsibility of the petitioner himself.

[8]. With the aforesaid observations, this revision petition is disposed of.

August 24, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No