

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

CR No. 940 of 2017

Date of decision : July 26, 2017

* * * * *

Ujjwal Sahrawat

.....Petitioner

Versus

Mr. Brijinder Singh and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mrs. Tammanna R. Sahrawat, Special Power of Attorney
for Ujjawal Sahrawat (petitioner).

Mr. Ramesh Sharma, Advocate for
the respondents-caveators.

* * * * *

RITU BAHRI, J.

Present revision petition has been filed under Article 227 of the Constitution against the order dated 3.10.2016 (Annexure P-1) passed by the Additional District Judge, Rohtak, whereby appeal against the order dated 1.8.2016 passed by the Civil Judge (Junior Division), Rohtak has been dismissed. Vide the trial Court judgment, an application moved by the petitioner under Order 39 Rule 1 & 2 read with Section 151 CPC for grant of ad interim injunction restraining the defendants from alienating the plaintiff from the suit property or interfering in any manner in the plaintiff's title in vacant plot no. 2A and adjoining plot of Ward 30 situated in Rohtak,

Delhi Road at Rohtak has been dismissed.

After hearing learned counsel for the parties, judgment and decree passed by the Civil Court dated 27.11.1971, vide which properties of the father of the plaintiff/petitioner was partitioned is not in dispute as it had attained finality. A perusal of the decree dated 27.11.1971 shows that the house situated at Rohtak came to the share of plaintiff no.1 Bulganin Singh and plaintiff no.2/respondent no.1 Mr. Brijender Singh Daulta in equal shares. The portion shown in red in the site plan mark B became the property of plaintiff No.1 Bulganin Singh while the portion shown as blue of plaintiff no.2 Brijinder Singh. Even though it has been specified in the decree that the garden plot no.8 and the agricultural land 26 K 1. marla came to the share of plaintiffs No. 1 & 2 in equal shares, a vacant plot situated on Rohtak Delhi Road at Rohtak came to the share of plaintiffs no. 3 & 4 Ujjwal Sahrawat (petitioner) and Smt. Sunehri Devi. These properties were shown in the site plan as red Mark C .

A perusal of this decree shows that in the house, no share was given to the present petitioner and it was given to plaintiffs no.1 and 2 in equal share. This decree has been examined by the trial Court and upheld that the entire house situated at Rohtak was given to Bulganin Singh and Brijender Singh in equal shares. As per the judgment and decree, partition had been carried out and there is no separate mention of the garden area, hence, the property in dispute which was given to two brothers in equal shares was compound property and included the garden as well and if the defendant after so many years is wanting to make construction they cannot be restrained to do so and no stay can be given in favour of one co-sharer against the another co-sharer.

Counsel for the parties have today produced in the court the relevant copies of decree dated 27.11.1971 and the maps. A perusal of the same shows that as per the plan 'Mark B', the portions have been clearly marked in red and blue, which includes the lawn as well. This decree has attained finalty and keeping in view the above fact, the application of present petitioner under Order 39 Rules 1 & 2 has rightly been dismissed by the trial Court vide Annexure P-2 and the appeal against the order of the trial Court has rightly been dismissed by the lower appellate Court.

In view of all that that has been discussed above, no illegality or infirmity is found in the impugned orders warranting interference of this Court. Hence, the present revision petition is dismissed.

26.7.2017
ritu

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No