

CR No.6860 of 2015

{1}

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

CR No.6860 of 2015

Date of decision:21.03.2018

Maya Dhari

... Petitioner

Vs.

Gurdial Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Dheeraj Mahajan, Advocate
for the petitioner.

Mr. Deepak Arora, Advocate
for the respondent.

AMIT RAWAL J.

The petitioner-defendant is aggrieved of the impugned order dated 08.07.2015 (Annexure P-4) rendered by the Additional District Judge, Gurdaspur, whereby the well reasoned order dated 04.03.2015 (Annexure P-3) passed by the Civil Judge (Junior Division), Gurdaspur, had been set aside.

Mr. Dheeraj Mahajan, learned counsel appearing on behalf of the petitioner submitted that respondent-plaintiff, Gurdial Singh filed a suit alongwith interim application seeking permanent injunction restraining the petitioner-defendant from raising any kind of construction over the suit land as shown in the site plan. The aforementioned suit was contested by filing written statement as well as reply to the application. The trial Court on the basis of evidence brought on record dismissed the application by holding that no injunction could be granted to the co-sharer until the suit land is

partitioned. However, the Lower Appellate Court in appeal reversed the findings by granting status-quo qua existence position and nature of the suit property, till the disposal of the suit. He has drawn the attention of this Court to the order dated 14.10.2015 vide which this Court while issuing notice of motion to the respondent had stayed the operation of the order of the Lower Appellate Court which reads thus:-

“Maya Dhari
Versus
Gurdial Singh

Present: Mr. Dheeraj Mahajan, Advocate
for the petitioner.

* * *

Notice of motion for 22.12.2015.

Interim suspension of the decree of the interim
order of the appellate Court.

14.10.2015

(K.Kannan)
Judge”

He submitted that trial is going on and suit is slated for plaintiff's evidence and the revision petition may be disposed of by maintaining the order dated 14.10.2015 passed by this Court by issuing appropriate direction to the trial Court for disposal of the suit in a time bound manner, for, prima facie the revenue record revealed that both the parties are co-sharers and therefore, interim injunction could not be granted as it is yet to be held whether the suit against co-sharer is maintainable or not.

Mr. Deepak Arora, learned counsel appearing on behalf of the

respondent-plaintiff submitted that even if the parties are co-owners injunction can always be sought with regard to raising of construction as it would definitely change the nature of the property. This is what was the prayer made before the Court below but the trial Court dismissed the application without noticing the aforementioned fact. The order of the Lower Appellate Court is perfectly legal and justified, for, both the parties had placed on record jamabandis. It is yet to be proved which of the jamabandis carried presumption of truth as per the provisions of Section 44 of Punjab Land Revenue Act. It is in that background, the Lower Appellate Court granted the status quo.

I have heard the learned counsel for the parties, appraised the paper book and of the view that without commenting upon the merit and demerit of the matter as it would seriously prejudice the case, for, the plaint is of 2015 and the order of the trial Court declining the application is dated 14.03.2015, whereas, that of Lower Appellate Court is of 08.07.2015 and since 14.10.2015, the order of the Lower Appellate Court was stayed. It would not be in the fitness of things to put the clock back in granting the status quo ante as both the parties during the pendency of the revision petition were pursuing the remedy before the Civil Court in accordance with law.

In view of the aforementioned observations, I deem it appropriate to dispose of the present revision petition by issuing a direction to the trial Court to decide the suit as expeditiously as possible preferably within a period of one year from the date of receipt of certified copy of this

order after affording 4-4 effective opportunities to the parties to the lis and till then order dated 14.10.2015 is ordered to be maintained.

Revision petition stands disposed of in the aforementioned terms.

(AMIT RAWAL)
JUDGE

March 21, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No