

C.R.No.7912 of 2015

Manoj Kumar
#1#2018.03.20 16:49
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

C.R.No.7912 of 2015

Amar Singh

....Petitioner

Versus

Satyavir and Ors.

....Respondents

Date of Order: 12.3.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Yadav, Advocate for the petitioner.

Mr. Rahul Deswal, Advocate for respondent Nos.1 to 8.

AMIT RAWAL, J (ORAL)

Petitioner-plaintiff is aggrieved of order dated 21.09.2015 passed by Civil Judge (Jr. Division), Narnaul whereby his application filed under Order 39 Rules 1 & 2 CPC has been dismissed and the order dated 30.10.2015 passed by learned Addl. District Judge, Narnaul dismissing his appeal filed against the same.

The plaintiff had filed a suit for permanent injunction restraining the respondents from changing the nature of the suit land till the partition of the property as the plaintiffs and proforma defendants are in possession of 2/3 share while contesting defendants are owners in possession of rest 1/3 share. Suit property is situated on the main road and is commercially very viable property. Respondents-defendants did not adhere to the request, necessitating the plaintiff to file the suit.

Along with the suit, an ad-interim application was also filed by the plaintiff but the same has been dismissed by both the courts below, hence the present revision petition.

Learned counsel for the petitioner submitted that both the courts below have misconceived the facts on record and therefore the findings given by them suffer from illegality. It is settled law that a co-sharer, even in exclusive possession of joint property cannot be permitted to change the nature of the suit land as it would seriously affect the partition proceedings.

Learned counsel for the respondents submitted that the impugned orders are perfectly legal and justified and that the plaintiff has failed to prove the fact that the land was mutually partitioned. Parties were in exclusive ownership and thus the plaintiff could not seek injunction.

I have heard learned counsel for the parties and perused the paper book with their able assistance.

The civil suit was filed on 04.8.2015 whereas the impugned orders are dated 21.09.2015 and 30.10.2015 respectively. The matter before the trial Court is still fixed for evidence of the PWs while the plaintiff could have led the entire evidence by now. In my view, it is yet to be proved whether the partition proceedings had ever taken place besides ascertaining the fact of the parties being co-sharers. The plaintiffs cannot seek injunction especially when the parties are in exclusive possession of their shares.

Without commenting upon merits of the case lest it may prejudice any of the parties, I deem it appropriate to dispose of this revision petition with a direction to the trial Court to decide the suit as expeditiously as possible.

Ordered accordingly.

March 12, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No