

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

Civil Revision No.7516 of 2018 (O&M)

Date of Decision: November 01, 2018

Kashmira

...Petitioner

Versus

Krishan

...Respondent

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Karan Singh, Advocate
for the petitioner.

HARINDER SINGH SIDHU, J.

The plaintiff has filed this civil revision impugning the order dated 4.9.2018 of the learned Additional Civil Judge (Senior Division), Kaithal, whereby, his application under Order 39 Rule 1 and 2 of the CPC for restraining the respondents from removing/lifting the earth from the suit land during pendency of the suit, has been dismissed. Also impugned is the order dated 13.10.2018 of the Learned Additional District Judge, Kaithal, whereby, his appeal thereagainst has been dismissed.

It was the case of the plaintiff that he is one of the co-sharers in joint possession to the extent of 9/40 share in the land as detailed in para 1 of the plaint. The defendant is also co-sharer in joint possession to the extent of 9/40 in the suit land. The land has not been partitioned by metes and bounds by any competent authority. Partition proceedings are pending before Assistant Collector 1st Grade Kaithal. It was pleaded that the defendant was intent on removing the earth from specific portions of the suit

land. If he is permitted to do so, the plaintiff would suffer irreparable loss as the nature of the land would change and it would not remain cultivable.

The case of the defendant was that the plaintiff is already in possession of more than his share of the suit land. It was also pleaded that the suit land had been partitioned among the co-sharers in the year 1990 and that the defendant was in exclusive possession of his share of the suit land. It was also pleaded that M/s Hanuman Bhatta Company was lifting the Malba, Chimney and remains of bricks etc. from 32 kanals of land, which had been leased to them upto June 2016, so as to make it cultivable as per the terms of lease agreement between the defendant and the said company. The plaintiff, defendant and other co-sharers are in exclusive possession of land as per their shares since 1990 and partition proceedings are pending before the Assistant Collector Ist Grade Kaithal, in which *Naksha Bay* had been prepared and separate *Kurrahas* of land had been allotted to the parties without disturbing the possession of the co-sharers.

The learned Trial Court noticed that the plaintiff and the respondent are co-sharers and in joint possession of the suit land and that the partition proceedings between them are pending, wherein, mode of partition had been framed and *Naksha Bay* had come on record and that M/s Hanuman Bhatta Company on expiry of its lease was removing the *malba*, chimney, remains of bricks, etc. to make it cultivable for the defendant. It was also noticed that the levelling of the land would not change the nature of the suit land. It was thus held that no prima facie case for grant of injunction was made out. It was also held that no injunction could be granted against a co-sharer. The only remedy available to the plaintiff was

to seek partition, which proceedings were already pending.

The appeal of the plaintiff was dismissed for the same reasons. Additionally, it was noticed that the counsel for the plaintiff had conceded that they were four brothers and they have been living separately for the last 20 years and were in exclusive possession of the land as per their shares. It was also observed that if the injunction is granted against the defendant and M/s Hanuman Bhattha Company is not allowed to remove *malwa, etc.* from the brick-kiln, the defendant would suffer irreparable loss and injury.

Both the courts below have declined to grant the injunction prayed for on valid grounds. There is no infirmity in the impugned orders.

Accordingly, the petition is dismissed.

November 01, 2018

gian/sd

**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No