

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1358 of 2017 (O&M)

Date of Decision: November 15, 2018

Jasvir alias Jaivir & another

...Appellants

Versus

M/s ISG Estates Pvt.Ltd. & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Abhishek Dhull, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

Appellant-defendants have not been successful in defending the suit for injunction restraining them from raising any construction or forcible interference till culmination of partition proceedings.

Plaintiffs asserted the right in the suit land being co-sharers of 24 kanals 7 marlas out of 28 kanals 12 marlas on the basis of the title. Concededly, the parties are co-sharers. This fact has been noticed by the courts below.

Mr. Abhishek Dhull, learned counsel appearing on behalf of the appellant-defendants submitted that in view of the parameters laid down in **Bachan Singh Versus Swaran Singh**, 2000 (3) RCR (Civil) 70 and reiterated by Full Bench in **Bhartu Versus Ram Sarup**, 1981 PLJ 204, a co-sharer cannot seek injunction against other co-sharers unless and until he is found to be in exclusive possession, which has not been proved on record. Sufferance of a statement on 17.10.2012 would not be an impediment as it was an order for the purpose of disposal of the ad-interim

application. Suit cannot be decided on the basis of application and, therefore, there is gross illegality and perversity.

I am afraid, the aforementioned argument, at this stage, would not be sustainable as concededly the partition proceedings are pending adjudication. Once the defendants clearly made a statement, the court passed an innocuous order restraining the defendants from dispossessing the plaintiffs till the culmination of partition proceedings and as well as for raising further construction.

For the reasons stated above, no ground for interference is made out. The judgments and decrees of the courts below are based upon appreciation of the evidence on record. No substantial question of law arises for determination. Resultantly, the appeal is dismissed.

November 15, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No