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

CR No. 1324 of 2019 (O&M)
Date of Decision: 26.02.2019

Dheeraj Yadav

-Petitioner

Vs

Krishan Gopal and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ajay Vijarania, Advocate,
for the petitioner.

Mr. Manish Mehta, Advocate,
for respondent No.1.

RAJ MOHAN SINGH, J.

Petitioner has assailed the orders dated 16.02.2018 and 14.11.2018 passed by Additional District Judge, Narnaul and Civil Judge (Junior Division), Mahendergarh dismissing the application under Order 39 Rules 1 and 2 CPC.

Admittedly, parties are co-sharers in the suit property. Jyoti Yadav, wife of the plaintiff and Geena Devi purchased the share of defendant No.3 vide registered sale deed in the suit property comprised in Khewat No.237, Khatoni No.251 measuring 10 Kanals to the extent of 5/202th share, Khewat No.285, Khatoni No.300 measuring 24 Kanals to the extent of 1/8th share, Khewat No.286, Khatoni No.301 measuring 4

Kanals to the extent of 1/8th share and Khewat No.288, Khatoni No.303 measuring 2 Kanals 3 Marlas to the extent of 9/80th share total measuring 3 Kanal 19 Marlas. Mutation No.1720 dated 08.08.2018 was sanctioned. The share was transferred by the vendees in the name of the plaintiff vide transfer deed dated 21.06.2018 and mutation was sanctioned. Defendant is in possession of his share.

Allegation was made by the plaintiff that after the aforesaid sale, defendant No.3 colluded with defendants No.1 and 2 and defendants No.1 and 2 are adamant to raise construction over the area more than their entitlement.

Apparently, parties are co-sharers and partition proceedings have been initiated by the respondents.

During course of arguments, it has come to fore that the construction raised by the respondents has reached upto the roof level and the three golden principles of *ad-interim* relief can be appreciated in the present case.

Evidently, there is no plea of ouster raised by co-sharers/respondents. Rights and liabilities of co-sharers are well defined in view of **Sant Ram Nagina Ram vs Dev Ram Nagina Ram, 1961 PLJ 528 (DB)**, **Bhartu vs Ram Swaroop 1981 PLJ 204 (Full Bench)** and **Ram Chander vs Bhim Singh 2008(3) RCR (Civil) 685 (Full Bench)**.

Mere making a construction on a joint land would not amount to ouster of other co-sharers and a co-sharer cannot seek injunction against other co-sharer from raising construction. The only remedy available to the aggrieved co-sharer was to file a suit for partition.

The view expressed by Division Bench of this Court in **Bachan Singh vs Swaran Singh, 2003(3) RCR (Civil) 70** can be appreciated wherein following opinion was expressed:-

“15. On a consideration of the judicial pronouncements on the subject, we are of the opinion that:

(i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession.

(ii) Mere making of construction or improvement of, in the common property does not amount to ouster.

(iii) If by the act of the co-owner in

possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to' prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which, is detrimental to his interest.

In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction restraining the co-owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner.”

Perusal of para no.7 of the impugned order dated 16.02.2019 passed by Additional District Judge, Narnaul would show that adequate measures have been taken by noticing incriminating facts on record.

Respondent No.1 has stated that he would not raise any construction beyond his share comprised in Khewat No.237.

Plaintiff could not show his exclusive possession over

the portion of the disputed land where construction is being raised.

Since the construction has reached upto the roof level, therefore, in the event of granting any stay in favour of the plaintiff, building material collected by respondent No.1 may get damaged. Even otherwise, all the three principles i.e. *prima-facie* case, balance of convenience and irreparable loss in the event of not granting *ad-interim* injunction are in favour of respondent No.1.

For the reasons recorded hereinabove, I deem it appropriate not to interfere in the impugned orders passed by both the Courts below.

This revision petition is accordingly, dismissed.

26.02.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No