

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

**CR-3878-2019 (O&M)  
Date of Decision: 14.6.2019**

Gopal

**.....PETITIONER(s).**

**VERSUS**

Mam Raj and another

**.....RESPONDENT(s).**

**CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI**

Present: Mr. Mohinder Singh Kathuria, Advocate  
for the petitioner.

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**RAJ SHEKHAR ATTRI, J.**

This is a petition under Article 227 of the Constitution of India for setting aside the order dated 16.5.2019 passed by learned Additional District Judge, Yamuna Nagar vide which the appeal filed by the plaintiff-respondent has been wrongly allowed against the order dated 20.4.2019 vide which the application of the plaintiff-respondent under Order 39 Rule 1 & 2 was dismissed by the learned trial Court.

Undisputedly, both the parties are recorded as joint owners of the land measuring 2K-8M comprised in Khewat No.249, Khatauni No.358 Khasra No.18//30(2-8) situated in the revenue estate of village Mandkheri, Tehsil Chhachhrauli, District Yamunanagar. One of the co-sharers namely Mam Raj (hereinafter referred to as, “the plaintiff”) has filed a suit for permanent injunction *inter alia* restraining the defendants

from changing the existing nature of the land by way of raising sort of construction. He also sought ad-interim injunction. The application for injunction was dismissed by the court below by making following observations in para 13 as under : -

“13. In view of aforesaid discussion, it is clear that mere making of construction or improvement on common property doesn't amount to ouster. Therefore, in the case in hand also making of construction on suit property is not detrimental to the interest of applicant/plaintiff. It is not going to diminish the value of suit property rather it would ultimately subject to the partition. If on partition, the suit property would fall into the share of applicant/plaintiff, the respondents/defendant, can be directed to pull down the construction raised by them over it and deliver the vacant possession of it to the applicant/plaintiff. Moreover, they have agreed to do so vide their joint statement dated 20.03.2019 and they will be bound by it. Besides this, they can be directed to compensate the applicant/plaintiff for loss, if any, suffered by him at the time of partition and this court is of the view that if any loss can be compensated in terms of money, it is not an irreparable loss.”

Said order was challenged by filing an appeal, which was allowed by the learned appellate court vide which the order of the learned trial Court dated 20.4.2019 was set aside and reversed.

I have heard learned counsel for the parties and gone through the record.

The law relating to possession and construction on the joint property remained matter of debate since long. Here is a small plot of 2K-

8M and both the parties are joint owners thereof. The plaintiff has admitted that now the land is not cultivable, rather some constructions have been raised. In the case of joint ownership of residential or commercial plot, the joint owners cannot be allowed to raise construction on the portion of his choice unless by seeking partition by metes and bounds or with consent of the remaining joint owners.

From a bare perusal of the written statement filed by the petitioner before the Court below, it transpires that the land is joint and the petitioner admitted that he was cultivating the land for the last 25 years, but he took the plea of oral family partition in para 2 thereof. This Court would like to reproduce this paragraph as under : -

“2. That in reply to para no.2 of the plaint, it is submitted that although in the revenue record the suit land has been shown as joint one, but as per family partition, the same has been given to the share of the defendants and the plaintiff and defendants are cultivating their own respective portions/lands peacefully since last more than 25 years. Even if it is presumed that the suit land is still joint, then the plaintiff has to file the suit for partition after including the whole land and whole parties/co-sharers. As such the suit of the plaintiff mere for permanent injunction is not tenable in the eye of law against the co-sharer.”

However, the matter can be viewed from another angle. In case the parties are co-sharers in the land meant for agricultural purposes. A small construction like a room, tubewell room or a cattle shed can be allowed to raise to cope with the requirements of the persons in common enjoyment and in joint possession. In the case in hand, the defendant

wants to construct his house by constructing roof with renforceable concrete cement (RCC). This kind of construction is certainly detrimental to the interest of the plaintiff and it will diminish the value of the remaining portion of the land.

The plea of oral partition has been denied by the plaintiff. It is a question of fact and shall be considered at the final stage when the parties will adduce evidence. At this stage, *prima facie* case is made out in favour of the plaintiff and balance of convenience also lies in his favour. In case construction is raised, then the plaintiff will suffer an irreparable loss and injury.

In view of the above, this Court is of the view that the impugned order does not suffer from any illegality, irregularity and infirmity.

Dismissed.

( RAJ SHEKHAR ATTRI)  
JUDGE

**June 14, 2019**  
Paritosh Kumar

***Whether speaking/reasoned:***  
***Whether Reportable:***

***Yes/No***  
***Yes/No***