

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

CR No.811 of 2016

Date of decision: 24th February, 2020

Chameli Devi & another

... Petitioners

Versus

Jai Narain & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. P.R. Yadav, Advocate for the petitioners.

Respondents – ex parte.

FATEH DEEP SINGH, J.

This is a revision by the unsuccessful plaintiffs (present petitioners) Chameli Devi and her son Mukesh whereby they have challenged an order dated 28.01.2016 (Annexure P3) passed by the Court of learned Civil Judge (Junior Division), Mahendergarh by virtue of which application under Order VI Rule 17 CPC dated 06.01.2016 (Annexure P1) stood declined.

Heard Mr. P.R. Yadav, Advocate for the petitioners and perused the records of the case.

In a civil suit for permanent injunction preferred by Chameli Devi, Subhash and Mukesh pending before the Court of learned Civil Judge (Junior Division), Mahendergarh against Jai Narain and Raghubir Singh, the applicants have claimed amendment of the counter-claim and replication as during the course of the trial of the suit the applicants/

petitioners claimed to have purchased 1/3rd share of the disputed land from its owner Muni Devi alias Mani Devi wife of Chet Ram through sale deed No.2722 dated 21.12.2015 and therefore claiming that they were co-sharers. It is by virtue of this purchase, the petitioners have sought to get the same incorporated in the counter-claim that they were owners in possession of the share to the extent Muni Devi alias Mani Devi possessed at the time of execution of the sale deed dated 21.12.2015. The defendants have in their response claimed that Muni Devi alias Mani Devi wife of Chet Ram was never owner in possession of the share so claimed and that earlier during the partition her husband had sold out their share in favour of defendant Jai Narain through sale deed No.249 dated 17.05.2010 and therefore denied the stand of the applicant. The Court below vide impugned orders dated 28.01.2016 dismissed the application being at a belated stage and therefore, was of the view that it was to unduly prolong the matter and that there was no merit in the application.

Appreciating the arguments of the two sides, it is a pure simplicitor suit filed by Chameli Devi, Subhash and Mukesh seeking a decree of permanent injunction. Since in view of the law laid down in **‘Anathula Sudhakar vs. P. Buchi Reddy’ (2008) 4 SCC 594**, the Court is not supposed to adjudicate on the title of the parties in a simplicitor suit for permanent injunction unless or until the same is evidenced and there is judicial necessity of doing so in the dispensation of justice. The parties are admittedly in joint possession to the extent of their respective shares

whatever be so as it may. Since there is no prayer for partition nor the land has been got partitioned, so keeping in view the law laid down in '**Bhartu vs. Ram Sarup**' 1981 PLJ 204, every co-sharer is owner in possession of every inch of the land unless or until partitioned or claims that he is in exclusive possession of the share over a long period of time duly acknowledged by the co-sharers. The own claim of the petitioners that they purchased the land to the extent of 1/3rd share from Muni Devi alias Mani Devi on 21.12.2015 and therefore has not much relevance for comprehensive judicial adjudication when the case is rather listed for rebuttal and arguments. The counsel to the specific query of the Court could not satisfy what prejudice has been caused by the impugned order. In case the applicants/petitioners are threatened by any such act of others, they are well within their rights to file a separate suit seeking decree for permanent injunction and can by no means jump into the fray by way of present suit and thus upset the applecart on which the parties are taking a ride. The impugned order does not suffer from any illegality or perversity necessitating intervention by this Court and the present petition being hopelessly without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 24, 2020

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No