

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

107

**CR-1628-2020 (O&M)
Decided on : 05.11.2020**

Mohan Lal and others

... Petitioner(s)

Versus

Som Nath

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

(Through Video Conferencing)

PRESENT: Mr. Baldev Singh Dhillon, Advocate
for the petitioner(s).

Mr. Jaswinder Saini, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

The petitioners/defendants are in revision before this Court against the order dated 19th February, 2020 (Annexure P-2) rendered by the Addl. District Judge, Kurukshetra, vide which, an application preferred against the order of dismissal of the injunction application filed by the respondent/plaintiff to impugn the order passed by the Civil Judge (Jr. Divn.), Pehowa, was allowed.

The respondent/plaintiff filed an injunction application under Order 39 Rule 1 & 2 of the CPC to restrain the petitioners/defendants from raising any construction on the valuable and specific portion of the suit land and not to remove the earth from the suit land, as that would amount to changing the nature of the suit land i.e. agriculture land measuring 11 Kanals 09 Marlas comprised in Khewat No. 136, Khatoni No. 354, Rect. No. 34, Killa No. 5/1/1/(2-1), Khatoni No. 358, Rect. No. 34, Killa No.4/1(7-2), 7/1/1(4-17), situated within the revenue estate of village

Mandi, Tehsil Pehowa, District Kurukshetra, vide Jamabandi for the year

2014-15.

The case of the respondent/plaintiff was that the suit land was joint and all the co-sharers were in exclusive possession; no partition had taken place. A suit for partition of the suit land had been filed before the A.C. Ist Grade, Pehowa and the petitioners/defendants were trying to change the nature of suit land.

The application was contested by the petitioners/defendants. In their written statement filed before the trial Court, the petitioners/defendants submitted that the petitioners/defendants and respondent/plaintiff were in separate possession of the suit land under a family arrangement; respondent/plaintiff, in fact, had concealed the factum of raising construction on a part of the suit land. Still further, it was stated that the petitioners/defendants had constructed their house in 1988, where they had been living jointly with their father. It was further stated that they were simply dismantling their old house and reconstructing on the same Khasra number i.e. 5/1/1 of Khewat No.136, Khatoni No. 357, Rect. No. 34 and Khasra No.4/1 of Khatoni No.358, Rect. No. 34 and hence they were not in any way changing the nature of the suit land.

Upon consideration, the trial Court dismissed the application of the respondent/plaintiff by holding that the plaintiff had failed to prove any injury or irreparable loss, which they were likely to suffer in case injunction was not granted. However, on appeal, the appellate Court while allowing the appeal, reversed the order of the trial Court and restrained the petitioners/defendants from raising any construction over the joint land till the partition proceedings were finalized and completed.

It has been argued by the learned counsel for the

petitioners/defendants that the lower appellate Court has erred in law in reversing the well considered order of the trial Court. It was argued that the lower appellate Court failed to appreciate that the construction being raised by the petitioners/defendants did not in any way amount to the ouster of the respondent/plaintiff nor would it lead to diminishing the value of the property in question. Still further, it was argued that the lower appellate Court erred in ignoring the fact that the respondent/plaintiff had already raised construction of his house on a part of the suit land bearing Khasra No. 5/2/2 and thus, now he could not turn around and seek injunction against the petitioners/defendants from restraining them to demolish their old house, which already stood constructed in Khasra Nos. 5/1/1/ & 4/1.

In support, the learned counsel for the petitioners/defendants has placed reliance upon **Akhtar Hussain Vs. Irfan and others, 2017(1) PLR 855, Hussan Lal Vs. Krishna Devi, 1996(1) CivCC 384 and Bhartu Vs. Ram Sarup, 1981 PLJ 204.**

Learned counsel for the respondent/plaintiff on the other hand reiterated the submissions made before the courts below and urged that since the suit land had not been partitioned by metes and bounds, the petitioners/defendants were simply trying to change the nature of suit land by way of construction on valuable and specific portion of the suit property by trying to remove the earth from the suit land.

I have heard learned counsel for the parties.

There can be no dispute as has been held in various judicial pronouncements that a co-sharer has no right to change the nature of the property till its partition takes place. However, there cannot be any bar either in law or in equity, vide which a party can be restrained from raising

construction over a portion of land, which is in his exclusive possession.

As an upshot to the aforementioned, the order dated 19th February, 2020 (Annexure P-2), impugned herein, is set-aside. The petitioners/defendants would be entitled to reconstruct the house only to the extent of their share in the suit property, which would, of course, be subject to the final outcome of the partition proceedings, which are stated to be pending before the A.C. Ist Grade, Pehowa.

Petition stands disposed of in above terms. It is, however, made clear that anything observed hereinabove would not be construed as an expression of opinion on the merits of the dispute between the parties.

(MANJARI NEHRU KAUL)
JUDGE

November 05, 2020

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*