

220

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

CR No. 2231 of 2020
Date of Decision: 08.10.2020

Dalip Singh

-Petitioner

Vs

Surinder Jain

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Harsh Chopra, Advocate,
for the petitioner.

Mr. Nimanyu Gautam, Advocate,
for the respondent.

RAJ MOHAN SINGH, J. (ORAL)

The case has been taken up for hearing through
video-conferencing.

Petitioner has assailed the order dated 31.07.2020
passed by Additional District Judge, Jalandhar vide which the
application filed by the petitioner under Order 41 Rule 5 CPC for
stay of operation of judgment and decree dated 06.03.2020 was
dismissed.

Suit for permanent injunction filed by the petitioner
was dismissed by the trial Court.

Defendant-respondent was proceeded against
exparte before the trial Court.

In the appeal filed by the petitioner against judgment and decree dated 06.03.2020, interim injunction has been declined on the ground that the petitioner is also a co-sharer in the suit land and suit for permanent injunction is not maintainable against other co-sharer.

Learned counsel for the petitioner by referring to para no.15 of **Bachan Singh vs Swaran Singh, 2000(3) RCR (Civil) 70** contended that 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.

Learned counsel for the petitioner further submits that 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.

Learned counsel places reliance upon **Shri Puran Singh vs Kuldeep Singh and another, 2018(4) RCR (Civil) 247** wherein ratio of **Bachan Singh's case (supra)** was relied and it was observed that proposed construction in the agriculture land would diminish the value and utility of the land as the nature of land from agricultural would be changed to Gair Mumkin.

Conditions No.3 and 4 of **Bachan Singh's case** **(supra)** would apply.

For the reasons recorded hereinabove, I deem it appropriate to set aside the order dated 31.07.2020 passed by Additional District Judge, Jalandhar and direct the parties to maintain *status quo* during pendency of the appeal.

The Additional District Judge, Jalandhar would be at liberty to proceed with the appeal in accordance with law.

08.10.2020
Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

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