

CR-3973-2019

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

CR-3973-2019 (O&M)
Date of Decision: 05.10.2020

Amarjit

....Petitioner

Versus

Ram Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Ramesh Sharma, Advocate, for the petitioner.

Mr. Rajesh Gupta, Advocate for the respondent.

HARNARESH SINGH GILL, J.

Case is taken up for hearing through video conferencing.

Challenge in the present petition is to the order dated 31.05.2019 passed by the learned Additional District Judge, Fatehgarh Sahib, vide which appeal filed by the respondent-plaintiff was allowed; the order dated 18.05.2019 passed by the learned Civil Judge (Jr. Divn.), Fatehgarh Sahib, was set aside and the application under Order 39 Rules 1 and 2 read with Section 151 CPC filed by the respondent-plaintiff, restraining the defendant from raising construction on adjacent portion of the property of plaintiff, without partition of the suit land, was allowed.

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Learned counsel for the petitioner has submitted that Munshi Ram-father of the parties to the suit, had purchased the suit property from one Amar Singh, vide sale deed dated 22.06.1968, and thereafter executed Will dated 23.02.1993 in favour of the petitioner and respondent (brothers). Though the suit property had not been partitioned by metes and bounds and it is a joint property, yet as per the oral family settlement, both the brothers are in possession of their exclusive shares.

Learned counsel for the petitioner-defendant has submitted that the respondent-plaintiff had made construction on the portion under his possession, whereas the petitioner-defendant was renovating the portion of the house in his possession being his share; that the old walls had already been repaired and that the building material was lying on the site and, therefore, the petitioner-defendant could not be restrained from renovating the portion which is owned and possessed by him.

It was further argued that after cancellation of the Will dated 23.02.1993 by Munshi Ram, a family settlement dated 19.07.1994 had been executed and Bhagwant Lal (since deceased), brother of the parties to the suit, had also been given equal share. All the three brothers, including the family of deceased-Bhagwan Lal, are in possession of their own respective shares.

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Lastly, it was argued by the learned counsel for the petitioner-defendant that petitioner is renovating/constructing his portion at his own risk and if at any stage, the constructed area falls in the share of respondent/plaintiff, the petitioner is bound to remove such construction.

On the other hand, learned counsel for the respondent-plaintiff argued that property in dispute has not been partitioned by metes and bounds and is still joint and if petitioner/defendant changes the nature of the suit property by raising construction over it, the same would cause irreparable loss and injury to respondent/plaintiff.

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

The site plan produced by the respondent-plaintiff is admitted by the petitioner-defendant. It is also not disputed that petitioner/defendant is renovating the portion of the house, on which construction already exists, the old wall have been repaired upto roof level and building material is lying on the site. Moreover, it is the stand of the petitioner that the renovation is being done at his own risk and if any portion of the property of the petitioner falls in the share of respondent/plaintiff, the petitioner will be bound to remove such construction at his own risk.

It is an admitted fact that the parties are in possession of their respective shares and the petitioner is

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renovating his portion and the present suit for partition has been filed by the respondent-plaintiff after the renovation started by the petitioner.

The petitioner/defendant has given an undertaking that at a later stage, if it is found that construction/renovation falls in the share of respondent/plaintiff, the petitioner will remove such renovated portion.

In view of the above, the present revision is allowed. The impugned order dated 31.05.2019 is set aside and the application under Order 39 Rules 1 and 2 read with Section 151 CPC is dismissed. However, the petitioner-defendant shall remain bound by the undertaking given before this Court.

(HARNARESH SINGH GILL)
JUDGE

05.10.2020
parveen Kumar/ds

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No