

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

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RSA-59-2021 (O&M)
Date of decision: 19.02.2021

MOHINDER KUMAR

...Appellant

Versus

KALU RAM AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Karan Sachdeva, Advocate for the appellant.

ANIL KSHETARPAL, J.

The plaintiffs-appellant has filed the regular second appeal against the concurrent findings of fact arrived at by the Courts below while dismissing the suit for grant of permanent injunction restraining the defendant from raising any construction or changing the nature of the property. It is the case of the plaintiffs that they are co-owners/co-sharers in the land measuring 41 kanals 9 marlas. The plaintiffs further state that an application for partition of the land is pending before the Assistant Collector Ist Grade.

The defendant contested the suit by submitting that he has purchased a specific portion of the property for construction of marriage palace. It has further been pleaded that he has already got permission to change the use of land (CLU) from the competent authority and started construction thereof. It has further been stated that the area in question is surrounded by buildings (residential as well as commercial).

The learned trial Court on appreciation of evidence dismissed the suit which was upheld by the First Appellate Court.

This Court has heard learned counsel for the appellant at length and with his able assistance, perused the paper book. It is apparent from the reading of the findings arrived at by the Courts below that the land is surrounded by residential and commercial buildings. It has also come on

record that the defendant purchased a specific portion of the property through a registered sale deed to construct a marriage palace. He has already got permission to change the use of land from the competent authority and started construction thereof. As regards pendency of the application for partition, it may be noted that the parties are yet to prove that the land continues to be their joint property. Once the permission for changing the use of land has already been granted by the State then the plaintiffs are not entitled to permanent injunction against the defendant from changing the nature of the property. Still further, the plaintiffs, as noticed above, filed the suit when the construction had already started. At this stage, if the construction is stopped, the defendant will suffer huge loss.

Keeping in view the aforesaid facts, no ground to interfere in the judgments passed by the Courts below is made out.

Dismissed.

19.02.2021

ashok

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No