

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

Sr. No.118

**CM No.1506-CII of 2021 in/and
Civil Revision No.139 of 2021
DATE OF DECISION: February 17, 2021**

SAVITRI DEVI

..PETITIONER

VERSUS

JAI SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Pawan Kumar Mutneja, Advocate,
for the petitioner.

SUDHIR MITTAL, J. (ORAL)

CM-1506-CII-2021

Application is allowed as prayed for and Annexures P-5 to P-10
are taken on record.

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The petitioner is the plaintiff. She has filed a civil suit for permanent injunction restraining the defendant from raising any construction over 6.33 marlas of land part of plot measuring 0K-19M comprised in Khasra No.492 of Village Gorchhi, Tehsil Balsamand, District Hisar. It is also prayed that the defendant be restrained from interfering in the peaceful possession of the plaintiff. Along with the plaint, an application under Order 39 Rule 1 & 2 CPC was filed for grant of ad interim injunction. The said application was dismissed by the trial Court vide order

dated

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25.11.2020. Appeal against the said order has also failed and order dated 22.12.2020 has been passed rejecting the same. The said orders are under challenge in this revision petition.

Learned counsel for the petitioner has submitted that the petitioner is in exclusive possession of 6.33 marls out of 0K-19M plot comprised in Khasra No.492. She has also constructed her residential house thereupon. Her physical possession is established by virtue of sale deed dated 07.12.2010 whereby 9.5 marlas out of 0K-19M was sold to her. Mutation dated 13.06.2011 was also entered thereafter thus, exclusive possession of 6.33 marlas stands established and a co-sharer in exclusive possession of a share of the joint property is entitled to protect the same. It has also been submitted that defendant had filed a suit for declaration and injunction in respect of the same property in which temporary injunction was declined. Thus, the Courts below have erred in dismissing the application for ad interim injunction.

A perusal of the order of the learned Appellate Court shows that a finding has been returned that Jai Singh-defendant is a co-sharer in the suit land to the extent of 1/3rd share. He has also constructed a house in the suit land. Under the circumstances, it has been held that a co-sharer cannot be enjoined unless and until the property is partitioned. It has further been held that in case the plaintiff-petitioner has constructed her house then she should have no fear of encroachment upon her property. Interference in possession can only take place in case the land is vacant. These findings are logical and cannot be termed to be erroneous. For

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success in the application for ad interim injunction, the plaintiff-petitioner had to establish a prima facie case in her favour but she has failed to do so and thus, the Courts below were justified in dismissing her application for ad interim injunction.

For the aforementioned reasons, impugned orders are upheld and revision petition is dismissed.

It goes without saying that nothing observed hereinabove shall be construed to be an opinion on the merits of the suit.

February 17, 2021
Ankur

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No