

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

CR-321 of 2021 (O&M)

Date of decision: 09.09.2021

Mam Chand and others

...Petitioners

Versus

Promila @ Parmila and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. R.S. Mamli, Advocate for the petitioners.

Mr. Robin Dutt, Advocate for the respondents.

H.S. MADAAN, J.

Case taken up through video conferencing.

Plaintiffs Promila @ Parmila, aged about 40 years wife of Sh. Angrej Singh son of Mam Chand R/o Village Dhalour, now resident of Village Shahpur, Tehsil Jagadhri, District Yamuna Nagar and her minor daughter Vaishnavi had brought a suit for grant of permanent injunction against defendants Mam Chand, his son Dalbir Singh and Dalbir Singh's son Mohit, all residents of Village Dhalour, Tehsil Bilaspur, District Yamuna Nagar, restraining the defendants from alienating the existing nature of the suit property bearing Khewat No.27, Khatauni No.41, Khasra No.19//19/1, 12/3, 11/5, situated at Village Dhalour, by way of raising any type of construction over it and further restraining the defendants from digging earth in any manner or alienating any specific khasra number therefrom; according to the plaintiffs, their predecessor-in-interest Angrej Singh expired in the year 2006; Angrej

Singh was co-sharer in the joint property along with his father Mam Chand and brother Dalbir Singh; after death of Angrej Singh, the plaintiffs have stepped into his shoes; mutation has accordingly been sanctioned in favour of plaintiffs and Smt. Guljari Devi in equal shares, vide mutation No.671; the plaintiffs are in joint possession of the suit land; defendant No.3 has been claiming that he has Will of Guljari Devi in his favour and the dispute in that regard is pending before SDM, Bilaspur; that the suit property is more valuable than the other land, since it is located adjacent to residential abadi; the defendants threatened to change the existing nature of the suit property by raising construction thereon and digging earth from the suit land and further to alienate their suit property; the plaintiffs had filed an application for partition, which is pending before AC (2nd Grade) Bilaspur; on refusal of defendants to concede the claim of plaintiffs, the plaintiffs brought a suit for grant of permanent injunction and moved an application for ad-interim injunction therein.

On notice, the defendants appeared, resisted the suit as well as application, contending that Sh. Angrej Singh, predecessor-in-interest of plaintiffs had died in a road side accident in the year 2006; after death of Angrej Singh, defendants requested the plaintiffs to reside with them but to no effect; now plaintiff No.1 at the instance of her father has started litigation with defendants; she had filed a petition in the High Court, wherein a compromise was effected under which Rs.2,50,000/- was to be deposited in the account of plaintiff No.2 and maintenance of Rs.10,000/- per month was to be granted to plaintiffs; according to the

defendants, Smt. Guljari Devi had executed a Will in favour of defendant No.3; the defendants further contended that they are not raising any construction in Khasra No.12/3, 11/5, whereas, they had raised construction over the part of Khasra No.19/1, having area of 4K-9M; the defendants have raised construction on 02 kanals and there is passage on two sides of this khasra number, which is lying vacant, therefore, construction over this khasra number is much less than the share of the defendants; as per plaintiffs, they have share less than 1 kanal in this khasra number and more than 2 kanals is lying vacant; front of 80 feet wide on eastern side is lying vacant; the defendants had constructed boundary wall in the year 2017, raising construction upto plinth level; about two years earlier, defendants have raised more construction and the further construction was stopped because a stay order has been granted by the trial Court; the construction is complete upto roof level and if the defendants are restrained from putting the roof over the wall, the whole construction would halt down and defendants would suffer irreparable loss.

After hearing arguments, the trial Court of Civil Judge (Jr. Divn.), Bilaspur being of the view that plaintiffs have failed to establish a prima facie case to the extent that defendants are constructing in the entire suit property and restraining them from raising construction above roof level would demolish the structure already constructed by the defendants, which would be irreparable loss to the defendants. In that way, application for ad-interim injunction was dismissed, vide detailed order dated 08.08.2019.

Feeling aggrieved, the plaintiffs had approached the Court of District Judge at Yamuna Nagar by filing an appeal against the order passed by the trial Court, dismissing the application for grant of ad-interim injunction filed by the plaintiffs. That appeal was assigned to Addl. District Judge, Yamuna Nagar, who vide order dated 02.02.2021 had accepted the same, setting aside the order passed by the trial Court. In that way, the defendants were restrained from raising unauthorized construction over the suit property without prejudicing right to seek partition. The defendants were further restrained from alienating the existing nature of the suit property.

The defendants feeling aggrieved by the said order have approached this Court by way of filing the present revision petition, which is being resisted on behalf of the respondents.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioners has pressed into service various judgments, first being Satish Chander Sethi Vs. M/s Chunilal Shyam Sunder in CR-727-1995 decided on 20.09.1995, Tarsem Singh Vs. Parkash Kaur, 2002(1) RCR (Civil) 803, Balkar Singh & Ors. Vs. Kehar Singh & Ors. 2007(3) RCR (Civil) 443, Arun Kumar & Anr. Vs. Kulwant Kaur & Anr. 2007(3) RCR (Civil) 641, Akhtar Hussain Vs. Ifran & Ors., 2017(1) PLR 855, Bachan Singh Vs. Swaran Singh, 2000(3) RCR (Civil) 70, Satpal Kaur & Anr. Vs. Joginder Singh & Ors. in RSA-2038-2016 decided on 06.08.2018, Gursharan Singh Vs. Bhupinder Kaur & Ors., in CR-4107-2008 decided on 06.08.2008 and

Maman Chand Vs. Kamla in CR-2804-1995 decided on 05.09.1995.

The revisionists have also placed on file copy of sanad taksim dated 18.03.2021 as Annexure A-1.

Though, learned counsel for the respondents/plaintiffs has vehemently opposed the present revision petition but then he has admitted that the partition has already been taken place. Under the circumstances, on account of the partition having been taken place and sanad taksim issued, the jointness between the parties, has come to an end and now they are absolute owners in possession of the khasra numbers allotted to them during partition. A perusal of sanad taksim goes to show that khasra No. 19/1 (4-9), which was bone of contention between the parties, has fallen to the share of the defendants, who are revisionists before this Court. It being so, they can certainly raise construction in the said land and the plaintiffs cannot raise any objection in that regard. Therefore, in view of such position, the impugned order passed by learned Addl. District Judge, Yamuna Nagar is accordingly set aside by way of accepting the revision petition. It is ordered accordingly.

09.09.2021

sumit.k

**(H.S. MADAAN)
JUDGE**

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