

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

CR-312-2021

Date of Decision: 19.02.2021

Swaran Singh

...Petitioner

Versus

Dharam Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ashok Bhardwaj, Advocate,
for the petitioner.

Mr. Dhirinder Chopra, Advocate
For the caveator-respondents.
(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

1. Aggrieved against an order dated 29.01.2021(Annexure P-4) passed by the appellate court/learned Additional District Judge, Patiala, petitioner/plaintiff is before this court. Vide order impugned herein, an interim restraint order dated 15.10.2020(Annexure P-3) passed by the trial Court on an application under Order 39 Rules 1 and 2 CPC, has been modified. The respondents-defendants and/ or their agents were initially restrained by the trial Court from alienating, transferring and changing the nature of the suit property, however, they have been permitted to do so by the appellate Court with a rider to not change the nature and character thereof.

2. Having heard rival contentions of learned counsels, I am of the view that no interference is warranted in exercise of revisional jurisdiction of this Court.

3. The relevant part of the impugned order reads as under:-

“In the said backdrop, considering the fact that the suit property is joint amongst the parties to the suit who are real brothers, it is evident that even if the defendants/ appellants succeeded in alienating any specific portion out of the suit property even then proposed vendee would step into the shoes of defendants being co-sharer in the joint possession. In the said scenario the sale would be deemed to be sale of share subject to partition proceedings as have already been initiated by the plaintiff. Hence, the appellants cannot be restrained from alienating/ disposing off their share indefinitely.

As far as changing the nature of the suit property is concerned, it is settled that in case of nature and character of suit property is ordered to be preserved, then both the parties would be saved from unnecessary inconvenience or harassment at a subsequent stage.”

4. Concededly, the parties to the suit are brothers. They are having 1/3rd share in the suit land in dispute. Plaintiff's stand is that the suit property was orally partitioned. Same is though not been incorporated in the revenue records. Indisputably, plaintiff himself has initiated partition proceedings against the defendantson the basis of said oral settlement/partition. In the premise, learned Appellate Court has rightly observed that, in case of any alienation, proposed vendee would step into the shoes of defendants being co-sharers in the joint possession. The proposed sale would naturally be subject to partition proceedings already initiated by the plaintiff.

5. Moreover, any alienation made during pendency of suit would, in any case, be subject to rule of *lispendence*. Any sale by the co-sharers would thus be subject to the final adjudication of the suit. Outcome of suit shall be equally binding on the subsequent purchaser/s, since the shares of the parties are yet to be determined in this case and they would transact at their own risk. Vide partial modification of the trial court order, appellate court has

rightly restrained the respondents from changing the nature and character of the suit property.

6. With the aforesaid observations, the instant petition is dismissed. Caveat is discharged.

February 19, 2021
Jiten

(ARUN MONGA)
JUDGE

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