

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

**CR-301-2021(O&M)**

**Date of decision : 09.12.2021**

Jaswant Singh

... Petitioner(s)

Versus

Bagicha Singh

... Respondent(s)

**CORAM: HON'BLE MRS. JUSTICE ALKA SARIN**

Present: Mr. Sarju Puri, Advocate for the petitioner.

Mr. Vishal Thakur, Advocate for  
Mr. Keshav Pratap Singh, Advocate for the respondent.

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**ALKA SARIN, J. (ORAL)**

Heard in virtual mode.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 03.02.2021 (Annexure P-1) whereby the Trial Court *inter-alia* ordered that :

*“Heard on stay application. At this stage, no ground is made out for granting ex parte ad interim injunction without hearing the opposite party. Let the notice of the suit as well as stay application be issued to the defendants for 15.02.2021 on filing of PF/RC with AD etc.”*

On 17.02.2021, this Court while issuing notice of motion had passed the following order :

*“Taken up through video conferencing.*

*Learned counsel for the petitioner would contend that defendant-respondent is trying to encroach upon the suit land in the garb of having purchased some share out of the adjacent khasra number. Learned counsel for the petitioner would further contend that irreparable loss would be caused to the petitioner in case the injunction is not granted in his favour.*

*Notice of motion returnable 17.03.2021.*

*Dasti as well.*

*In the meantime, status quo as it exists today be maintained.”*

Today learned counsel for the respondent, on instructions, has made a statement that the defendant-respondent is not carrying out any construction on Khewat No.229 qua which the civil suit has been filed and he is only carrying out the construction on Khewat No.228 on which he has a legal right to do so being a co-owner.

Learned counsel for the petitioner, despite a very categorical statement having been made by learned counsel for the respondent that the defendant-respondent is only carrying out the construction on Khewat No.228 and is not carrying out any construction on Khewat No.229 qua which the present suit has been filed, insists that he would still need to argue the main case.

Learned counsel for the petitioner has contended that the defendant-respondent under the garb of construction in Khewat No.228 is trying to encroach upon Khewat No.229. It has further been contended that the Trial Court had not granted *ex parte ad interim* injunction which it ought

to have granted inasmuch as the same would lead to changing the nature of the property since the defendant-respondent is encroaching upon the same.

Learned counsel for the respondent, as noted above, has already made a categorical statement that the defendant-respondent is only carrying out the construction on Khewat No.228 over which he has a legal right being a co-owner of the said khewat. It has further been categorically stated by learned counsel for the respondent that no construction or any encroachment has been made in Khewat No.229 qua which the present suit has been filed.

Heard.

The facts relevant to the present *lis* are that the plaintiff-petitioner filed a civil suit for permanent injunction for restraining the defendant-respondent himself or through anybody else, from interfering and dispossessing the plaintiff, in any manner, being co-owner in the *abadi* property measuring 6 marlas 6 sarshais out of 1 kanal 13 marlas bearing Khewat No.229, Khatouni No.287 and 288, Khasra No.32//24/4 (0-8), 25//24/4 (1-5) as entered in jamabandi for the year 2013-14, situated in the area of Village Gahoon H.B. No.198, Tehsil Balachaur, District Shaheed Bhagat Singh Nagar, forcibly and illegally and from encroaching upon the suit property. The said suit was presented on 03.02.2021 and the Trial Court deemed it necessary to call upon the other side before granting *ad interim* injunction. Against the said order, the petitioner had approached this Court and this Court on 17.02.2021 had issued notice of motion and also directed that *status quo* be maintained.

Learned counsel for the respondent has made a statement in Court today that there is no encroachment which has been made on Khewat No.229 qua which the suit had been filed by the plaintiff-petitioner and the only construction which is being carried out by the defendant-respondent is on Khewat No.228 qua which he has a legal right to do so being a co-owner.

The counsel for the plaintiff-petitioner has not brought anything on the record to substantiate his contention that the defendant-respondent is in fact carrying out construction on Khewat No.229 and not Khewat No.228. He also could not deny that the defendant-respondent is a co-owner in Khewat No.228. Being a co-owner in Khewat No.228 the defendant-respondent cannot be restrained from enjoying his property with which the plaintiff-petitioner has no concern. The plaintiff-petitioner has not been able to make out a prima facie case in his favour nor is the balance of convenience in his favour nor has he been able to show what irreparable loss would be caused to him if the defendant-respondent raises construction in Khewat No.228.

The impugned order passed by the Trial Court was only on the stay application which is still pending. It was passed while issuing notice to the defendant-respondent. The stay application itself was not dismissed and is still pending. Needless to mention, the Trial Court shall decide the said application in accordance with law. However, at this stage, no ground has been made out for this Court to interfere with the impugned order.

The present civil revision is, therefore, dismissed. Nothing mentioned in this order shall have any bearing on the final decision on the

stay application or the civil suit.

Since the main civil revision petition has been decided, the pending civil miscellaneous applications, if any, also stand disposed off.

**09.12.2021**  
Yogesh Sharma

**( ALKA SARIN )**  
**JUDGE**

**NOTE: Whether speaking/non-speaking: Speaking**  
**Whether reportable: YES/NO**