

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 938 of 2021 (O&M)

Date of Decision: September 16, 2021

CHANDER BHAN

.... Petitioner(s)

Versus

JAGDISH AND OTHERS

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ram Kumar Saini, Advocate
for the petitioner.

Mr. Raman Chawla, Advocate
for the respondents.

LISA GILL, J.(oral)

Petitioner/plaintiff has filed this revision petition challenging orders dated 15.01.2021 (Annexure P5), passed by learned Civil Judge (Junior Division), Hisar and 24.02.2021 (Annexure P8), passed by learned Additional District Judge, Hisar, whereby petitioner's application under Order 39 Rules 1 & 2 CPC has been dismissed.

Petitioner/plaintiff filed a suit for permanent injunction seeking relief to the effect that he is a co-sharer in the property as described in the plaint and that the property has not been partitioned between the parties by metes and bounds, therefore, defendants have no right to sell or dispose of any specific killa number except as per their share. Along with the suit an application under Order 39 Rules 1 and 2 CPC was filed for restraining the defendants from selling, disposing off, mortgaging any specific killa number, before partition is carried out.

Learned trial Court on considering the facts and circumstances observed that no injunction can be granted against the co-sharer and that sale of joint land even if by mentioning specific killa numbers, would be considered to be a share of the property. Furthermore, plaintiff, it is observed has failed to prove his exclusive possession over any portion of the joint property. No prima facie case or balance of convenience was found in favour of the plaintiff/present petitioner with no irreparable loss being found be caused to the plaintiff.

Appeal filed by the petitioner has been dismissed by the learned Additional Judge, Hisar vide impugned order dated 24.02.2021. Aggrieved therefrom this revision petition has been filed.

Learned counsel for the petitioner vehemently argues that partition of the land has not been carried out. In fact, suit for partition filed by the petitioner is still pending, therefore, it is not open to the respondents to alienate the suit property by mentioning specific khasra numbers. He relies upon decision of Hon'ble Supreme Court in ***Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, 2005 AIR (SC) 104.***

Learned counsel for the respondents while supporting the impugned orders submits that petitioner himself has carved out plots in the property in question. Dismissal of this revision petition is sought.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

It is a matter of record that property in question is admittedly joint. Petitioner and the respondents are co-sharers. Both the learned Courts below have rightly observed that no co-sharer can lay claim over a specific share of the joint property unless and until partition by metes and bounds is effected. It is further correctly observed that even if the joint property is alienated by mentioning specific killa numbers or giving boundaries, it would be considered to be a sale of the share held by the co-owner in the joint property. Furthermore, such sale necessarily would remain subject to partition proceedings.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 15.01.2021 (Annexure P5), passed by learned Civil Judge (Junior Division), Hisar and order dated 24.02.2021 (Annexure P8), passed by learned Additional District Judge, Hisar, which call for any interference by this Court in revisional jurisdiction.

No other argument has been raised.

Accordingly, this revision petition is dismissed with no order as to cost.

September 16, 2021

Sunil

**(Lisa Gill)
Judge**

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