

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

Sr. No.120

CR-1275-2021 (O&M)
Date of decision : 27.07.2021

Bikkar Singh Aujla

..... Petitioner

VERSUS

Sukhwinder Singh Aujla @ Sabhi

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Gulzar Mohammad, Advocate, for the petitioner.

Mr. Vikas Bali, Advocate, for the respondent-caveator.

SUDHIR MITTAL, J. (Oral)

The petitioner is the defendant. He is aggrieved because appeal of the plaintiff-respondent against order dated 18.05.2021 passed by the trial Court, rejecting the application under Order 39, Rules 1 & 2, C.P.C, has been accepted and he has been restrained from alienating more than his share in the joint land and also from interfering in the possession of the plaintiff-respondent in land measuring 33 kanals and 01 marla.

The plaintiff-respondent is residing abroad. He has executed a power-of-attorney in favour of Surjit Singh son of Sandhu Singh. A lease of the land in suit has been executed in favour of the said power-of-attorney after expiry of lease in favour of the defendant-petitioner. Despite the same, the defendant-petitioner has not transferred vacant possession of the entire land in dispute to the power-of-attorney and thus, the suit for injunction was instituted. As stated hereinabove, the application for ad interim injunction was dismissed by the trial Court, against which, the appeal has been allowed.

Learned counsel for the defendant-petitioner submits that the parties being co-sharers, suit for injunction, is not maintainable. Moreover, the lease in favour of the defendant-petitioner was till the year 2025. This fact establishes the possession of the defendant-petitioner and thus, the appellate Court was in error in allowing the appeal.

Vide impugned order dated 02.07.2021, the learned appellate Court has recorded that the plaintiff-respondent is in exclusive possession of 33 kanals and 01 marla out of the joint land. This finding has been reached on the basis of revenue record produced. Accordingly, the defendant-petitioner has been restrained from alienating more than his share and from forcibly interfering in the peaceful possession of the plaintiff-respondent over land measuring 33 kanals and 01 marla. This finding has not been shown to be erroneous except for raising the plea that suit for injunction against a co-sharer is not maintainable. This is not an absolute proposition. In certain circumstances, such as the present ones, a co-sharer can be enjoined . A co-sharer in possession of specific parcel of land can protect his possession till land is partitioned.

In view of the above, the petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

27.07.2021
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No