

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3070-2019 (O&M).

Date of Decision: September 08, 2021

BALBIR KAUR

..... PETITIONER(s)

Versus

NARINDER KAUR AND ANOTHER

..... RESPONDENT(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

Mr. Tejinder Pal Singh, Advocate
for the respondents.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of pandemic, COVID-19.

Prayer in this revision petition is for setting aside order dated 31.05.2018 (Annexure P1), passed by the learned Civil Judge (Jr. Division), Garhshankar, whereby application under Order 39 Rule 1 and 2 CPC, filed by the petitioner has been declined. Appeal filed by the petitioner has been dismissed by the learned District Judge, Hoshiarpur, vide order dated 25.04.2019 (Annexure P2).

Brief facts necessary for adjudication of the matter are that the petitioner/plaintiff filed a suit for permanent injunction for restraining the defendants/respondents from raising any construction or encroaching on any part of the Katcha street (passage) as described in the plaint or from changing the nature of the suit property by raising any construction thereon or alienating the same till the property was partitioned by metes and bounds. Petitioner

claimed that she was using the passage in question without any interference and that respondent/defendant no.1 purchased 12 Marlas of land from the plaintiff and her brother Baldev Singh vide sale deed dated 08.02.2017 and thus became a co-sharer in joint possession of the suit property. It is further pleaded that the defendants threatened to raise construction on the joint property in an illegal and forcible manner and to encroach upon the passage in question. An application under Order 39 Rule 1 and 2 CPC was also filed alongwith the suit by the petitioner/plaintiff. Learned trial Court finding no merit therein, dismissed the same vide impugned order dated 31.05.2018. Learned District Judge, Hoshiarpur dismissed the appeal filed by present petitioner/plaintiff vide impugned order dated 25.04.2019. Aggrieved therefrom present petition has been filed.

Learned counsel for the petitioner vehemently argues that first and foremost as per Jamabandi for the year 2012-2013, it is a share of the property, which has been sold in favour of the respondents by the petitioner alongwith Baldev Singh. Moreover, even if specific Khasra numbers have been alienated, it is a settled position of law that the same would nevertheless be construed to be a transfer of a share in the joint property. Furthermore, partition proceedings between the parties are admittedly pending, therefore, for preservation of character of the land, a case is made out for grant of injunction even against a co-owner. It is thus prayed that present petition be allowed and impugned orders be set aside.

Learned counsel for the respondents, per contra argues that sale of the property with specific Khasra numbers and details has been effected by the petitioner herself alongwith another co-owner and the respondent put in possession thereof. Moreover, Sanad Taqsim is in favour of the respondents

and the appeal filed by the petitioner against the same is pending. It is thus prayed that present petition be dismissed.

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

It is a matter of record that the petitioner alongwith co-owner Baldev Singh sold 12 Marlas of the land out of Khasra No.737 and 740, as per Jamabandi for the year 2012-2013 with specific boundaries alongwith right in passage etc., vide sale deed dated 08.02.2017. Photocopy of the sale deed, circulated on the whatsapp group, created for the purpose of video conferencing, has been perused. It is further not denied that partition proceedings between the parties are pending. In the given factual matrix, both the Courts below have rightly observed that no prima facie case is made out in favour of the plaintiff to grant interim injunction and neither balance of convenience lies in her favour and that she would not suffer any irreparable loss in case, interim relief is not afforded to her. Judgments of the Hon'ble Supreme Court in *Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, 2005 AIR (SC) 104* and *Bachan Singh Vs. Swaran Singh 2000(3) RCR (Civil) 70*, are of no avail to the petitioner. In fact, learned counsel for the petitioner is unable to point out anything on record to indicate that the respondent/co-owner has carried out any act which amounts to diminution of value and utility of the property or amounts to ouster or is prejudicial or adverse to the interest of the petitioner. Indeed once the petitioner herself along with co-sharer - Baldev Singh had sold the property in question to respondent - Narinder Kaur in the manner as detailed, no ground for issuance of any interim injunction is made out. Moreover as per settled law, construction if any, raised

by the respondents, shall necessarily be subject to final order in the partition proceedings admittedly pending between the parties.

Learned counsel for the petitioner is unable to point out any illegality or infirmity in the impugned orders, which calls for interference of this Court in exercise of revisional jurisdiction.

No other argument has been raised.

Accordingly, this revision petition is dismissed.

September 08, 2021
Sunil

(LISA GILL)
JUDGE

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