

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2123 of 2020 (O&M)

Date of Decision: 06.12.2021

Prakash Chand

... Petitioner(s)

Versus

Ashok Kumar Gupta and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Chetan Mittal, Senior Advocate
with Mr. Kunal Mulwani and Mr. Himanshu Gupta, Advocates
for the petitioner(s).

Mr. Ajay Jain, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. The plaintiff assails the correctness of the orders passed by the trial Court as well as the First Appellate Court while dismissing the application under Order XXXIX Rules 1 and 2 CPC for grant of temporary injunction.

2. The plaintiff and the defendants claim to be the purchasers of an undivided share in a joint property. The petitioner claims that he has purchased the land measuring 5 Kanals and 18 Marlas vide sale deed dated 12.01.1995, whereas the defendants have purchased the land measuring 9 Kanals and 7 Marlas vide sale deed dated 12.01.1995, 3 Kanals and 13 Marlas vide sale deed dated 04.09.1995 and the defendant No.2 and 3 have purchased the land measuring 2 Kanals and 3 Marlas. The plaintiff filed the

with claiming that the defendants have started raising construction on the

joint land. Both the Courts below, as noticed above, have dismissed the application for grant of temporary injunction.

3. The learned counsel representing the petitioner contends that the respondents are raising construction on a valuable piece of land which abuts a National Highway. He contends that during the pendency of the suit, the defendants should be restrained from changing the nature of the property. On the other hand, the learned counsel representing the respondent No.1 claims that the plaintiff is the owner of a factory which is adjoining the land purchased. He submits that the property has already been partitioned as is reflected in the revenue record and the respondents are utilizing the property purchased by them.

4. After having heard the learned counsel for the parties at some length, this Court is of the considered view that there is no substance in the present revision petition.

5. It is not in dispute that the plaintiff, after purchasing the land measuring 5 Kanals and 18 Marlas, was put in possession of a specific portion. Similarly, the defendants were also put in possession of a specific portion of the property. Thereafter, there was no dispute between the parties for a period of 25 years. On the one hand, the petitioner claims that the property continues to be joint, whereas on the other hand, the defendants claim that the property has been partitioned.

6. Keeping in view the facts of the case and the orders passed by both the Courts below, this Court does not find it appropriate to interfere with the orders passed, in the exercise of revisional jurisdiction. Hence, the present revision petition is dismissed. However, it is observed that any

construction on the property shall be subject to the result of the suit.

7. At this stage, the learned counsel representing the petitioner contends that an application for permission to amend the plaint so as to incorporate the relief of partition has been filed. This Court has no doubt that the trial Court would proceed to decide the application in accordance with law.

8. Needless to observe that any observation made by the Courts, while deciding the application under Order XXXIX Rules 1 and 2 CPC, shall not be construed as an expression on the merits of the case and the trial Court, while deciding the suit, shall not be influenced by the aforesaid applications.

9. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

December 06, 2021

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No