

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

CR-1358-2021

Date of Decision: 26.07.2021

Parkash Chand

....Petitioner

VS

Malkiat Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sanjay Majithia, Sr. Advocate with
Mr. Jatinder K. Sharma, Advocate
for the petitioner

Mr. Navjot Singh, Advocate
for the respondent-Caveator

SUDHIR MITTAL, J. (Oral)

The petitioner is the plaintiff. He has filed a suit for injunction restraining the respondent from alienating more land than his share and also for restraining him from raising construction during the pendency of the suit on Khasra No.645. Along with the suit, an application under Order 39 Rules 1 and 2 CPC was also filed, which was partially allowed by the trial Court. The defendant-respondent was restrained from alienating more than his share. However, the relief of restraining raising of construction was rejected. Appeal against the said order has been dismissed by the learned Appellate Court.

Learned Senior counsel for the petitioner has submitted that revenue record in the shape of Jamabandi for the year 2016-17 as well as Khasra Girdawari for the year 2020-21 establishes beyond doubt that the land in dispute is joint land. The defendant-respondent submitted a wrong site plan (Annexure P-9) to mislead the revenue authorities ceased of the matter of partition. The correct site plan is Annexure P-10 and its correctness is proved from Aks Shajra (Annexure P-11)

with which it tallies. In case, the defendant-respondent succeeds in raising construction during the pendency of the partition proceedings, the land over which the construction has been raised would not be subject matter of partition by the revenue authorities. A co-sharer in joint land can restrain another co-sharer from raising construction on a specific parcel of land because equities may arise in his favour in case he succeeds in raising construction. Thus, the learned trial Court as well as the Appellate Court were in error in rejecting the prayer for restraining the defendant-respondent from raising construction.

There is no quarrel with the submission of learned Senior counsel for the petitioner that the suit land is un-partitioned as on date. However, the Courts below have relied upon proceedings of the Gram Panchayat recorded on the letter-head of the Sarpanch. In proceedings dated 20.12.2020, the Gram Panchayat had asked both the parties to compromise. In proceedings dated 17.06.2021, it has been noted that on the said date, the Panchayat went to the land in dispute and at that time, defendant-respondent was raising construction on the land in his possession. It is also noted that the plaintiff-petitioner had admitted that in family partition, the land on back side adjoining to the already existing house was given to the defendant-respondent and that he has been in possession thereof for the last 20-25 years. Report of the Halqa Patwari regarding the defendant-respondent raising construction on land in his possession has also been relied upon. On the basis of this evidence, a finding has been returned that the defendant-respondent is in possession of part of Khasra No.645 since 20-25 years and that he is raising construction on the said portion only. This finding has not been shown to be erroneous in any manner apart from raising an argument that the land still remains joint in the revenue record. That is in fact so, however, if a co-sharer is in physical possession of a part of the joint land and the possession is admitted by the other

co-sharer, he cannot be restrained from raising construction thereupon. The said construction shall, however, be subject to the final order of partition. The apprehension of learned Senior counsel for the petitioner that upon raising construction, the land would not remain the subject matter of partition by the revenue authorities is misplaced. The land in dispute is agricultural land and merely by raising construction thereupon, it cannot be said that the revenue Courts cease to retain jurisdiction thereupon.

For the aforementioned reasons, I do not find any merit in this petition. Accordingly, the same stands disposed of.

(SUDHIR MITTAL)
JUDGE

26.07.2021
Poonam Negi

Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No