

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

CR-1668-2021

Date of decision: 01.12.2021

SangeetaPetitioner

versus

Sunil Kumar and othersRespondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Randhir S. Hooda, Advocate
for the petitioner.

Mr. Suresh Kaushik, Advocate for
Mr. Dharamvir Sharma, Advocate
for the caveators-respondents.

FATEH DEEP SINGH, J.

Due to outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

The petitioner-Sangeeta, who was earlier plaintiff before the Trial Court had initiated a suit on the averments that she is the owner in possession of property bearing Khewat/Khata No.32/37, Rect. No.11, Killa No. 24/1 (1 Kanal 15 Marlas), total Kita 01, measuring 00 Kanal 03 Marla 03 Sarsai i.e. 102 square yards situated within the revenue estate of village Kankarola, District Gurugram having purchased

for a valuable consideration through sale deed No.3287 dated 01.02.2018. The then plaintiff further claims that she is in peaceful and physical possession of her portion of the property. It is claimed that defendant No.1-Sunil Kumar has raised construction by way of shop on the southern side of the plaintiff's plot and has arraigned respondents No.2 and 3, father and son duo, previous owner of the entire property, who had carved out plots from their property. Threatened over the illegal acts of the opposite side, the plaintiff had filed a suit seeking decree of permanent injunction restraining the defendants and their agents on encroaching upon the property of the plaintiff. The Court of the learned Civil Judge (Junior Division), Gurugram vide impugned order dated 22.07.2021, dismissed the application seeking temporary injunction against which, the instant revision has been filed by the then plaintiff.

Heard learned counsel of both the sides and perused the records.

What is emanating from the submissions of the two sides, respondents No.2 and 3, the father and son duo, have carved out certain plots from their agricultural land and which has been further sold to the plaintiff as well as respondent No.1. It is not, thus, displaced that it is un-partitioned co-sharer property as per the revenue records. The present petitioner Smt. Sangeeta and present respondent

No.1-Sunil Kumar, are in occupation of different plots carved out of this common property, thus, by that means they are deemed to be co-owners/co-sharers of this joint un-partitioned property. Thus, in view of the well enshrined position of law laid down in Full Bench view of this Court in the case of 'Bhartu versus Ram Sarup', 1981 PLJ 204, every co-sharer is owner and in possession of every inch of the undivided co-sharer property and by that means, both these main contestants-Sangeeta and Sunil Kumar are deemed to be owners and in possession as co-sharer of this joint property. There is nothing suggestive that partition has ever been undertaken or any settlement has been arrived at between the parties. The learned Court below in the impugned findings (Annexure P-1) has fell into an error by holding at the very first instance while disposing off an application for interim injunction that the suit was not maintainable as the plaintiff has not brought the existing state of affairs on the spot through site plan or that there is any element that verbal agreement was entered into between the parties over their respective shares and has drawn the conclusion that it was an un-partitioned co-sharer property of the parties and has held that there being no specific date that agreement was arrived at between the parties regarding their division of specific shares and portions of properties has wrongly held that possession of the plaintiff over the disputed portion is not

established *prima facie*.

In view of the admitted stands of the two sides and the settled position of law, both the revisionist/petitioner as well as respondent No.1, being co-sharers of this un-partitioned property, are deemed to be owner in possession of every inch of this un-partitioned property till partition is affected between them.

Thus, the impugned order certainly suffers from illegality and perversity and needs to be set aside.

Keeping in view such unresolved position, it would sub-serve the ends of justice, if these parties are directed to maintain *status quo* over the disputed property as per share under their occupation till partition is effected legally.

The instant revision petition stands disposed off as having been partly allowed to that extent.

01.12.2021

Neha

**(FATEH DEEP SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No