

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1309 of 2021 (O&M)

Date of Decision: 18.11.2021

Tara Devi

... Appellant(s)

Versus

Gyan Kaur and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Harsh Aggarwal, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The plaintiff assails the correctness of the concurrent finding of the facts arrived at by both the Courts below while dismissing the suit for grant of decree of permanent injunction.

2. Admittedly, the plaintiff claims to be the purchaser of an undivided share in a joint land. Both the Courts below have found out that she is not in the physical possession of any part of the aforesaid property. The appellant is stated to have filed an application for partition of the property which is pending. It is the case of the defendants that the property has been mutually partitioned by metes and bounds. The plaintiff filed a suit claiming that the defendants are making an attempt to raise construction over a specific portion of the joint property. It may be noted here that the plaintiff claims to have purchased a specific portion of the joint land. Both the Courts below have found out that although there is no evidence of the mutual

partition, however, the plaintiff is admittedly not in possession, as a result,

she is not entitled to the decree.

3. The learned counsel representing the appellant contends that as the property is joint property, therefore, the parties should maintain *status quo* till the partition proceedings are finalized. He further contends that the defendants are trying to establish their exclusive possession.

4. Heard learned counsel for the appellant at length and with his able assistance, perused the judgment passed by both the Courts below.

5. Both the Courts below found out that the plaintiff is not in actual physical possession of any part of the joint property. In other words, the defendants are in possession of the same. The defendants are alleged to be raising construction over a part of the joint property. By raising construction, the value and utility of the joint land will not decrease or go down. The plaintiff is yet to finally establish that the property continues to be a joint property. In the partition proceedings, if the competent Court comes to a conclusion that the property is joint, then it shall proceed to partition the same irrespective of the construction on the joint property. In these circumstances, the plaintiff is not likely to suffer any irreparable loss.

6. Keeping in view the aforesaid facts, no ground is made out to interfere. Hence, the present appeal is dismissed.

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

(Anil Kshetarpal)
Judge

November 18, 2021

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No