

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

133

CR-119-2021(O&M)
Date of decision: 08.08.2022

DESHRAJ AND ANOTHER

..Petitioners

Versus

MADAN MOHAN AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Munish Gupta, Advocate
for the petitioner.

Mr. S.K.Yadav, Advocate
for respondent No.1.

Mr. Sanjay Mittal, Advocate
for respondent No.2 to 11.

ANIL KSHETARPAL, J(Oral)

1. The petitioners herein are the defendants in a suit for grant of permanent injunction and mandatory injunction with a prayer not to forcibly dispossess the plaintiff from the suit land.

2. Both the Courts have granted interim injunction restraining the defendants from changing the nature of the suit property by raising any construction on any specific portion thereof till the final decision of the suit. The defendants are purchasers of 1 bigha and 6 biswas of land. The plaintiff is owner to the extent of 1/3rd share in the land measuring 14 bighas and 7 biswas. It is not the case of the plaintiff that he is not in actual, physical possession of the land as per his share in the property. Both the Courts have granted injunction on the ground that as per the revenue record, the parties are co-sharers, therefore, the defendants have no right to raise constructions unless there is partition between the parties.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. In my considered view, the orders passed by the Courts below are not sustainable on the following grounds:-

1. Admittedly, the properties have been converted into a colony and as many as 10 residential houses already exists on the spot.

2. From a bare look at the revenue layout plan, it is evident that the plaintiff being owner of 1/3rd share, is in the possession of land located on the Narnaul-Behror road as well as on the passage which goes to *Kojinda ki dhani*.

3. The plaintiff is into bench hunting. He filed a previous suit for grant of injunction on 30.01.2019, which was withdrawn on 03.04.2019. Permission to file fresh suit was neither prayed for nor granted.

5. On 04.04.2019, he filed a fresh suit only on the ground that the defendants, while filing the written statement, disclosed that some part of the property has been sold. The plaintiff could have filed an application for impleadment of the party.

6. Once a substantial part of the property has been converted into a colony, the concept of co-ownership with reference to a joint khewat remains doubtful. In an agricultural land, the land comprised in *khata* is joint and every co-owner is presumed to be in possession of every parcel of the land. Once a colony has been carved out, the aforesaid concept of co-ownership in the context of joint *khewat* is debatable.

7. The learned counsel representing the defendant contends that in the partition proceedings, if any portion of the other property falls to the share of the plaintiff, then, they will not claim any compensation.

8. Before granting injunction, the Court is required to examine whether the plaintiff has made out a *prima facie* case, balance of convenience lies in favour of which party and whether allowing or refusing injunction would cause irreparable loss and injury to the other party. In the present case, the defendants are purchasers of a specific portion of the property. If they are restrained from constructing, then they are the ones who would suffer irreparable loss and injury. Whereas, if ultimately the plaintiff succeeds, they would receive the property along with the improvements which have been or may be made.

9. Hence, the balance of convenience lies in favour of the defendants and granting an injunction would cause irreparable loss to them.

10. Consequently, the order under challenge is set aside while observing that if any improvement is made on the land in question and if in the partition proceedings, if any, any portion belonging to the defendant falls to the share of the plaintiff, the defendant shall not claim any compensation at all.

11. With these observations, the present petition is disposed of.

12. All the pending miscellaneous applications, if any, are also disposed of.

August 08th, 2022

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(ANIL KSHETARPAL)
JUDGE

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