

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 626 of 2022

Date of Decision: 07.04.2022

Banwari

... Petitioner(s)

Versus

Hardawari

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. P.R.Yadav, Advocate
for the petitioner(s).

Mr. G.S.Gandhi, Advocate
for the respondent.

Anil Kshetarpal, J.

1. The petitioner, herein, is a defendant in a suit filed by the plaintiff (respondent herein) for grant of decree of possession by way of partition along with the consequential relief of permanent injunction. Hereinafter, the parties shall be referred to by their names.

2. Both the parties are brothers. They have jointly purchased the agricultural land measuring 1 kanal and 19 marlas. Hardwari filed a suit for grant of decree of possession by way of partition, claiming that the suit property is joint.

3. Banwari (the defendant) contested the suit while asserting that the property has already been partitioned vide a writing dated 28.09.1994. Banwari also asserted that after partition of the property, both the parties have constructed their respective houses and are living therein. He further

asserted that the defendant's construction is still continuing, therefore, the

plaintiff should not be granted any injunction.

4. Both the Courts below have ordered to maintain *status quo* while observing that the deed of partition dated 28.09.1994 is yet to be proved.

5. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

6. Banwari has placed on record the layout plan (Annexure P3) and from the perusal thereof, it is evident that both the brothers have their respective properties having opening to the main road as well as a passage. They have property in khasra No. 78, which has been divided and both the parties have constructed their respective houses. Hardawari has a plot in khasra No. 79, which has opening to the main road as well as on the side passage. Whereas Banwari has a small opening on the main road as well as a passage on the back side. Thereafter, Banwari and Hardawari purchased the land comprised in khasra No. 84 and 85. As per the case of Banwari, the property has been divided vide a writing dated 28.09.1994, under which he has been given the share on the main road which has an opening towards the passage. Whereas Hardawari has been given equivalent area having opening on the passage which is on the front of his own house. As per the layout plan, both the parties have already constructed their respective houses. When Banwari wanted to raise further construction, Hardawari filed the suit.

7. It is also evident that both the Courts below have failed to record any finding with regard to three necessary ingredients, which are a *sine qua non* for grant of injunction, namely:-

i) The plaintiff has a *prima facie case*;

- ii) The balance of convenience lies in favour of the plaintiff.
- iii) The plaintiff will suffer an irreparable loss and injury which cannot be compensated subsequently.

8. Thus, both the orders, without examining the aforesaid three ingredients, are perverse.

9. Moreover, as of now, there is a writing which is allegedly signed/thumb marked by two brothers. Therefore, the plaintiff does not have a *prima facie* case.

10. Furthermore, both the brothers have already constructed their respective houses. Banwari has specifically pleaded in his written statement that Hardawari has constructed his house and is residing there. In these circumstances, stalling the construction is rather counter-productive. Such injunction should not ordinarily be granted unless there is some material on the record to prove that the plaintiff will suffer an irreparable loss and injury which cannot be compensated subsequently.

11. Keeping in view the aforesaid facts, the present revision petition is allowed and the orders, under challenge, are set aside while dismissing the application for grant of injunction. However, it is observed that if the suit is decreed and the portion on which Banwari raises construction, he shall handover the possession without claiming any compensation for the construction raised.

(Anil Kshetarpal)
Judge

April 07, 2022
“DK”

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