

116 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-739-2022

Date of Decision: 04.03.2022

SURYA PARKASH

...Petitioner

Versus

RAJESH KUMAR

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Vikram Singh, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein, under Article 227 of Constitution of India is for setting aside the impugned order dated 15.02.2022 (Annexure P-3) passed by the Additional District Judge, Charkhi Dadri vide which, the appeal of the petitioner has been dismissed and also for setting aside the order dated 26.11.2021 (Annexure P-1), vide which, the application under Order 39 Rule 1 and 2 read with Section 151 CPC has been dismissed by the trial Court.

2. Petitioner/plaintiff filed a suit for permanent injunction against the respondent/defendant, stating therein that they along with others are co-sharers in the suit land measuring 22 Kanal 8 Marlas. The plaintiff has a share of 7.7 Marlas in the said suit land, which has not been partitioned by the co-sharers and the respondent/defendant is adamant to raise construction in Khasra no.149 (2-1). Application for ad-interim injunction was filed for restraining the respondent from raising construction, which was dismissed vide order dated 26.11.2021. Aggrieved, the petitioner filed an appeal against the said order, which too was dismissed vide order dated 15.02.2022 (Annexure P-3). Hence, the present petition.

3. I have heard learned counsel for the petitioner and gone through the case file.

4. The order assailed herein is premised, *inter alia*, on the following reasoning:

“9. *In the present case, the appellant-plaintiff claims that the respondent-defendant be restrained from raising*

construction over any portion of the suit property, without partition and to change the nature of the suit property. However, as already observed by the learned trial Court, a perusal of the jamabandi placed on record shows that the suit property is gair-mumkin property and the co-sharers in it have already raised construction of their houses and some of the land is left as Bara. It is also no disputed that the appellant-plaintiff himself has constructed a room in khasra No.113/1. In these circumstances, raising of construction by the respondent-defendant on any of the portion, which is in his possession would certainly not amount to changing of the nature of the suit property. More so, the appellant-plaintiff has an equally efficacious remedy of seeking partition of the suit property in case he so desires. In these circumstances, no prima-facie case is made out in favour of the appellant-plaintiff.

10. Further, the appellant-plaintiff has also concealed material facts from the Court. According to the pleadings of the appellant-plaintiff, he claimed to be owner of 7.7 Marlas of land in the suit property, whereas according to the jamabandi of the suit property, his share would come around 11.23 sq. Yards, as disclosed in the written statement. Therefore, on the ground of concealment of facts also, the appellant-plaintiff is not entitled to the relief claimed for.”

5. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law, so as to exercise extraordinary revisional jurisdiction of this Court.

6. There is no room for interference in the aforesaid valid reasons recorded by the Appellate Court, with which I am in agreement.

7. However, it is made clear that any construction carried out, which is alleged to be beyond the permissible limits, shall be at the sole risk and cost of the defendant and subject to the final outcome of the suit. In case, eventually the suit is decreed, he shall restore the *status quo ante* qua the construction as it existed at the time of filing of the suit.

8. Disposed of accordingly.

March 04, 2022

gurpreet

(ARUN MONGA)

JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No