

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4884 of 2019 (O&M)
Date of decision: 22.12.2022

Harish

..Petitioner

Versus

Anita and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Aggarwal, Sr. Advocate, with
Mr. Karan Singla, Advocate,
for the petitioner.

Mr. Chetan Mittal, Sr. Advocate, with
Mr. Himanshu Gupta, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

1. The petitioner herein is the defendant in a suit filed by the respondents for grant of decree of permanent injunction.
2. The plaintiffs, while claiming to be co-sharers in a joint property, filed a suit for grant of decree of permanent injunction restraining the defendant from constructing the building thereupon without getting the property partitioned. The plaintiffs claim 1/8th share in the alleged joint property measuring 4265 sq. yards.
3. The defendant while contesting the suit, claims that the son of plaintiff no.1 has had filed a suit for partition in which a similar prayer for temporary injunction has been dismissed. Subsequently, the plaintiffs, who are the mother and sister of the plaintiff in the previous suit has filed the present suit. The trial court declined to grant the relief of temporary injunction, however, the First Appellate Court has held that the defendant has failed to disclose the date, month or year of the alleged mutual partition

and the previous litigation pending between the parties shall not have any effect on the relief of temporary injunction and thus, granted the relief.

4. This Bench has heard the learned senior counsels representing the parties at length and with their able assistance perused the paper book.

5. It is not in dispute that the entire area is residential-cum-commercial in nature. The plaintiffs have also constructed their house thereupon. The defendant is constructing over an area of 80 sq. yard only. Out of the joint property, the share of the plaintiffs comes to 800 sq. yards which is already in their possession. The suit filed by Mr. Sumit, son of the plaintiff no.1, for partition of the property is admittedly pending. The defendant claims that the property has already been partitioned.

6. Any restraint on the construction of the property would result in irreparable loss and injury to the defendant rather than the plaintiffs in case the suit is dismissed, whereas, if the construction is permitted, that would be value addition and not depreciation of the property. Moreover, the parties are yet to lead evidence. There are three golden principles, namely, prima facie case, balance of convenience and irreparable loss and injury in case the relief is granted. Without examining the case on the basis of the aforesaid tests, the Court is not expected to grant the relief of temporary injunction. It is evident from the photographs that the construction is at an advanced stage as the roof slab of ground floor as well the first floor has already been laid, whereas, the preparations have been made for laying the roof slab on the second floor.

7. The learned senior counsel representing the defendant undertakes to remove the construction and deliver the possession or hand over the constructed portion as such without claiming any compensation in

case the defendant's plea of property having been already partitioned is not accepted, thereby, resulting in a decree of partition and the property in question being allocated to the plaintiffs.

8. The learned senior counsel representing the plaintiffs contends that the defendant should be restrained from creating third party rights.

9. Similarly, the learned senior counsel representing the defendant undertakes that the defendant shall not alienate the property in any manner. However, if the defendant lets out the property, he shall be liable to submit the quarterly accounts in the trial Court. The defendant shall not be entitled to claim any equity or benefit of the construction which has been permitted during the pendency of the suit.

10. With these observations, the order is modified. The revision petition is disposed of.

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

December 22, 2022
nt

(ANIL KSHETARPAL)
JUDGE

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