

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

CR No.3787 of 2022 (O&M)

Date of decision: 14th September, 2022

Krishna

... Petitioner

Versus

Sat Narain & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Chanderhas Yadav, Advocate for the petitioner.

MANJARI NEHRU KAUL, J.

The petitioner is impugning order dated 02.08.2022 (Annexure P7) passed by the Court of learned Civil Judge (Junior Division), Jhajjar vide which status quo was ordered in the suit in question.

Learned counsel submits that the impugned order is patently illegal and contrary to the settled principles of law. He submits that the trial Court failed to appreciate that petitioner had taken possession of a specific portion in the suit property from the vendors, who were co-sharers and had subsequently been carrying out construction over her share. Learned counsel has urged that on account of the impugned order, the petitioner is being put to hardship, as she is unable to continue with the construction which has already been carried out to a significant extent. It is submitted that being a co-sharer she is entitled to use and enjoy her share of the suit property. Learned counsel

further submits that the petitioner is ready to give an undertaking that if after the partition, any portion over which she has raised construction, falls to the share of any other co-sharer, she would demolish the same at her own cost. In support, learned counsel has placed reliance upon **‘Major S.S. Khanna v. Brigadier F.J. Dhillon’ 1964 AIR (SC) 497** and **‘Bachan Singh vs. Swaran Singh’ 2000 (3) RCR (Civil) 70.**

I have heard learned counsel and perused the relevant material on record.

Respondent No.1/plaintiff has filed a suit for possession by way of partition of immovable property. Admittedly, one of the co-sharers of the suit property has sold a specific portion to the extent of his share, to the petitioner and after taking possession, the petitioner is raising construction over that part of the portion so purchased by her. It would be relevant to observe here that a co-sharer cannot alienate a specific portion of the total land under joint ownership. Such co-sharer can only sell his share and the subsequent buyer would only step into his shoes as a co-sharer to the extent of share so purchased by him. Still further, merely because the petitioner has started raising construction, which as urged is nearing completion, it cannot be a ground to set aside the impugned order as the partition between the parties is yet to take place.

This Court would desist from delving into the merits of the case at this stage, since application under Order 39 Rules 1 and 2 CPC is still pending before the Court below. The petitioner would be at

liberty to raise all these pleas before the trial Court at the time of adjudication on the said application.

The case law relied upon by the learned counsel cannot come to his rescue, as in the instant case, the petitioner is a vendee of specific portion in the suit property which is under joint ownership and has not been partitioned yet.

As a sequel to the above, there being no merit in the instant petition, the same stands dismissed. However, anything contained herein above shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

September 14, 2022

rps

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