

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

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CR-4237-2022 (O&M)
Date of decision: 29.09.2022

Dinesh Singh

.....Petitioner

Versus

Dilawar Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner/plaintiff is impugning the dismissal of his application filed under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short, 'the Code') by the Trial Court vide order dated 11.07.2022 (Annexure P-8) and judgment dated 19.09.2022 (Annexure P-10) of Additional District Judge, Narnaul.

Learned counsel appearing for the petitioner submits that the impugned orders deserve to be set aside as the Courts below failed to appreciate that though the parties are co-owners in joint possession of the suit land, however, pursuant to an oral partition effected between them, the parties including the petitioner had been in separate settled possession over the suit property, to the exclusion of each other and to the extent of their respective shares. Learned counsel has urged that the parties had also raised construction over their respective portions, however, now the respondents/defendants with an ulterior motive had started interfering in the possession of the petitioner by digging up foundation to raise construction by encroaching upto 7 feet area of land

falling in the share of the petitioner. Therefore, in case the respondents were not restrained from doing so, the petitioner would suffer irreparable loss which could not be compensated monetarily. In support, he has placed reliance upon ***Bhartu Vs. Ram Sarup : 1981 PLJ 204.***

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

Admittedly, neither the joint property has been partitioned by metes and bounds nor has the factum of the oral partition been intimated to the revenue authorities. Further, the factum of oral partition has been specifically denied by the respondents and there is nothing on record to show that the petitioner has been in exclusive possession of a specific portion of the suit property.

It is well settled principle of law that until and unless a joint property has been partitioned, each of the co-sharers would be deemed to be having possession over each and every inch of such joint property. In the circumstances, the Courts below cannot be faulted with for dismissing the application under Order 39 Rules 1 and 2 of the Code. The case law relied upon by the learned counsel would not come to his rescue as the petitioner has failed to prima facie show that he was in possession of any specific portion of the suit property to the exclusion of other co-owners.

As a sequel to the above, this Court is not inclined to exercise its revisional jurisdiction and set aside the impugned order. The instant revision petition being devoid of merit is dismissed.

However, it is made clear that anything observed

hereinabove shall not be construed to be an expression of opinion on the merits of the case.

29.09.2022

(MANJARI NEHRU KAUL)
JUDGE

Vinay

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