

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

269

**CR-3351-2021  
Date of Order: 03.03.2022**

**JAIPAL AND ORS**

**..Petitioners**

**Versus**

**SAJJAN**

**..Respondent**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Vivek Khatri, Advocate  
for the petitioners.

Mr. Manjeet Singh, Advocate  
for respondent.

**ANIL KSHETARPAL, J(Oral)**

The defendants have filed the present revision petition assailing the correctness of order passed by the First Appellate Court while allowing a miscellaneous appeal on 10.12.2021. The respondent filed a suit for grant of decree of permanent injunction restraining the defendants from alienating, transferring, mortgaging the specific portion in excess of their share and changing the nature of the suit land by raising any construction over the suit land measuring 8 kanals which is claimed to be joint. The plaintiff claims that all the parties to the suit are co-sharers. In the written statement, defendants asserted that the property has already been partitioned in-between the family members and other co-sharers are in the specific and exclusive possession of their share of the land. It was further stated that the defendant No.1 has already constructed his residential house, whereas, defendant No.2 is in the process of constructing his residential house.

The learned trial Court, on appreciation of material, found that the plaintiff has failed to make out a *prima facie* case or balance of convenience in his favour. The First Appellate Court, after noticing that an

application for partition is pending and all the co-sharers are deemed to be in joint possession of the property, passed a restraining order.

This Bench has heard the learned counsel representing the parties at length and with their able assistance, perused the paperbook.

The learned counsel representing the petitioners contends that construction of the residential house upto roof level is complete and the plaintiff never objected to the construction of the house by petitioner No.1, which is in existence for quite some time. He further submits that the petitioner is ready to undertake that if the plaintiff succeeds in the partition proceedings and the disputed portion falls in the share of the plaintiff, he shall remove the construction at his own cost and risk.

Per contra, the learned counsel representing the plaintiff (respondent herein) submits that since the partition proceedings are pending, therefore, the petitioner No.2 should not be permitted to carry on the further construction.

Before the grant of an injunction, the Court is required to examine the matter by applying three tests. The plaintiff can be granted injunction only if he proves a *prima facie* case and balance of convenience in his favour. He is also required to establish that he will suffer irreparable loss and injury.

It is evident that the First Appellate Court has failed to apply the aforesaid tests. Furthermore, it is not in dispute that the petitioner No.2 has already constructed walls upto roof level. The construction material of petitioner No.2 is lying on the spot. It is also not in dispute that petitioner No.1 has not only constructed his house but is staying there and the respondent never objected to the same.

Keeping in view the aforesaid facts, this Court is of the considered view that once the petitioner No.2 has undertaken to complete the construction at his own risk of demolition and has also undertaken before the Court that he will remove the construction in case the plaintiff (respondent) succeeds in the partition proceedings in relation to the property in question, if it falls in the share of the plaintiff, then an injunction should not be granted against him.

Hence, the order passed by the First Appellate Court is set aside.

The learned trial Court is requested to decide the suit expeditiously.

With these observations, the present petition is disposed of.

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

**March 03<sup>rd</sup>, 2022**

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**(ANIL KSHETARPAL)  
JUDGE**

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