

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

237

CR-1002-2019 (O&M)

Date of Decision :24.03.2023

Kailash Singh and others**...Petitioner**

Versus

Hari Darshan Singh and others**...Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Adarsh Jain, Advocate for the petitioner.

Mr. Nihul Pratap Singh, Advocate for respondent No.6.

* * *

Harsimran Singh Sethi, J. (Oral)

In the present revision petition, challenge is to the order passed by the trial Court dated 13.12.2018 by which, an application filed by the petitioners/plaintiffs under Order 39, Rule 1 and 2 of the CPC seeking interim injunction was declined as well as to the order dated 28.01.2019 passed by the District Judge, Faridabad by which, an appeal preferred by the petitioners-plaintiffs against the order dated 13.12.2018, was dismissed.

The suit which has been filed by the petitioners-plaintiffs was for partition. The grievance of the petitioners-plaintiffs is that during the pendency of the said partition proceedings, nature of the property could not be changed to the disadvantage of the petitioners-plaintiffs so that in case the property which is in the possession of the defendants comes to the share of the petitioners-plaintiffs, the same does not lose any value or status.

Learned counsel for the respondent No.6 submits that the suit was filed by placing reliance upon a jamabandi of the year 2003-2004 to contend that there was only one khewat of the total land measuring 50 kanals and 2 marlas whereas, it has already come on record in the order dated 28.01.2019 passed by the Lower Appellate Court that subsequent to the jamabandi of the year 2003-2004, in the year 2008-2009 a separate khewat has been carved out in which petitioners-plaintiffs were shown to be co-sharers in 42 Kanals and 11 Marlas of land comprised in khewat No.213.

Learned counsel for the respondent No.6 submits that keeping in view the said factum as the land which is being held by the petitioners-plaintiffs is in khewat No.213, no grievance can be raised by the petitioners-plaintiffs qua the land owner, who got the land in their favour with specific demarcation as the same is in Khewat No.212.

Though, the said factum is being disputed by the learned counsel for the petitioners-plaintiffs but the same could not be substantiated and he prays that the said fact be left open to be taken up in the appropriate proceedings.

I have heard the learned counsel for the parties have gone through the record with their able assistance.

Partition of the land can only be done by way of partition proceedings. Parties aggrieved can resort to the remedy of partition by filing an appropriate application. This Court is only to ensure that in case partition proceedings have been initiated, the land owner does not suffer any prejudice due to the change in the nature of land in question by any co-sharer.

In the present case, it has already come on record that the land in question is not a cultivable land but plots have been cut for construction. That being so, the interest of the parties can be protected by noticing that any construction undertaken by any party on the said land, which is in their respective possession and in case said land comes to the share of any other co-sharer, no benefit of the construction will be available to a party who has raised construction and no such objection will be raised by such party before the authorities concerned at the time of partition of the land.

Learned counsel for respondent No.6 submits that his undertaking be recorded that in case land measuring 02 kanals and 07 marlas, comprised in Rect No.19, Killa No.2/1/1 (1-4) 9/3 (1-3), which is in the possession of respondent No.6 according to the sale deed, comes to the share of the petitioners-plaintiffs, any construction done on the said land will be demolished by them and same will be given to the petitioners-plaintiffs without raising any grievance in case the same go to the share of the petitioners-plaintiffs as per partition proceedings.

The said undertaking is good enough to protect the interest of the petitioners-plaintiffs-co-sharer.

Keeping in view the above, the present petition is disposed of with the direction that in case, ultimately in the partition proceedings land which is in the possession of the respondent No.6 comprised in Rect No.19, Killa No.2/1/1 (1-4) 9/3 (1-3) comes to the share of the petitioners-plaintiffs herein, the same will be handed over to the petitioners-plaintiffs by the defendant No.6 and even if, any construction has been undertaken by defendant No.6 and the same needs to be demolished, the same will be done by defendant No.6. It is made clear that construction, if any, undertaken by

the parties, will be at their own risk without conferring any right upon them.

CM-20842-CII-2019 &
CM-9176-CII-2021

Applications are also disposed of.

March 24, 2023
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

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