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

**CM-9731-CII-2023 in/and
CR-723-2022 (O&M)
Date of Decision: 26.05.2023**

Swaran Singh

....Petitioner

Versus

Balwinder Singh Bajwa

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Bikram Chaudhary, Advocate
for the applicant/petitioner.

Mr. Anshuman Narula, Advocate
for the non-applicant/respondent.

ARUN MONGA, J. (ORAL)

CM-9731-CII-2023

For the reasons stated in application, same is allowed. Main case, which was dismissed in default vide order dated 25.04.2023, is restored to its original number.

At the oral request of learned counsel for parties, the revision petition is taken up on Board for hearing today itself.

Main case

Petition herein is for setting aside order dated 12.08.2021 (Annexure P-4) passed by Ld. Civil Judge, Patiala, whereby the application under Order 39 Rules 1 & 2 CPC, filed by plaintiff/respondent, was allowed. Further prayer is

made to set aside order dated 16.12.2021 (Annexure P-6) passed by Ld. Additional District Judge, Patiala, whereby the appeal of petitioner against order dated 12.08.2021 (Annexure P-4), was also dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Respondent/plaintiff has filed a suit before the Ld. Court below seeking permanent injunction restraining petitioner/defendant, his agents, servants from changing the nature of suit land, stating that suit land is still joint between the co-sharers. Along with suit, respondent/plaintiff also filed an application under order 39 Rule 1 and 2 CPC for grant of *ad* interim injunction.

2.2. Respondent/plaintiff further alleged that he and petitioner/defendant are co-sharers in the suit land and the land is still common between them and petitioner/defendant, with a view to obtain wrongful gain, is trying to carve out the colony on the valuable portion of the land by laying the road and making the constructions in clever manner and the petitioner/defendant is trying to raise the constructions on the valuable portion of the land which is adjoining the main road and situated near the village.

2.3. Petitioner/defendant filed written statement denying averments of the suit and also filed the reply to the application under Order 39 Rules 1 and 2 CPC denying the averments of the application.

2.4. Vide impugned order, Ld. Civil Judge (Jr. Divn.), Patiala allowed the application of respondent/plaintiff, filed under Order 39 Rules 1 and 2 CPC and restrained petitioner from changing the nature of suit land by making any sort of construction and laying roads during pendency of suit.

2.5. Aggrieved, petitioner/defendant preferred an appeal, which was dismissed by Ld. Additional District Judge, Patiala vide impugned order.

3. Learned counsel for petitioner would argue that petitioner has been restrained not to change the nature of land, whereas the construction has already been carried out prior to passing of injunction order.
4. *Per contra*, learned counsel for respondent would oppose the revision and submits that no fault can be found with the findings of Ld. Courts below.
5. Heard.
6. Order dated 16.12.2021 (Annexure P-6) passed by learned Additional District Judge, Patiala assailed herein is premised *inter alia* on the following reasoning:

“xxxx xxxx xxxx xxxx

11. I have heard the learned counsel for the parties and have perused the file. From the perusal of the record, it revealed that the parties are co-sharer in the entire khewat, though the defendant/appellant has sold some share vide power of attorney or through various sale deeds to various persons and construction in the suit property is being raised but it is well settled that when parties are co-sharer in joint possession and the defendant is not in exclusive possession in any portion of the joint property, he has no right to make the alienation on the valuable portion of the property without getting it partitioned and has no right to change the nature of the same by raising construction, which is detrimental to the interest of other co-sharer. So case law cited as Supra by Id. Counsel for the respondent is fully applicable to the facts of the present case and the case law cited by learned trial Court are also applicable to the facts of the present case. There is no document of oral partition between the parties. The plaintiff-respondent has made complaints to various authorities against carving out the colony by the defendant/appellant. So in these circumstances, there is no infirmity in the impugned order passed by the learned trial Court. All the ingredients for grant of temporary injunction : are made out in favour of the plaintiff/respondent. Hence the present appeal is without any merits and same stands dismissed.

xxxx xxxx xxxx xxxx”

7. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law, so as to exercise extraordinary revisional jurisdiction vested with this Court. Orders impugned herein have been passed as per the ratio enunciated in the judicial precedents cited therein.

8. Remaining contentions in the petition have been duly considered and rejected by Learned Court below by giving sound and convincing reasons in the impugned order, more particularly in the part extracted above. I am inclined to agree with the view thereon taken by learned Courts below.
9. In my opinion, even if the argument of learned counsel for petitioner is accepted to the effect that construction had already been carried out prior to the passing of impugned order, there is no ground as to why this Court should exercise its revisional jurisdiction, since the restraint is against raising any construction after passing of injunction order. As per the argument of learned counsel for petitioner himself, the construction was existing prior thereto.
10. In the premise, petition herein is dismissed.
11. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 26, 2023
ashish

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