

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1231 of 2022 (O&M)
Date of Order:22.11.2023

Inder Singh and another

.Appellants

Versus

Duli @ Dulli Chand (since deceased) through LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Aditya Jain, Advocate
for the appellants.**

ANIL KSHETARPAL, J

1. This is the defendants' appeal against the judgment passed by the First Appellate Court. An application for condoning the delay of 118 days in filing the appeal has also been filed. On the request of the court, the learned counsel representing the appellants has agreed to address the court on merits.

2. The respondents(plaintiffs) filed a suit for grant of decree of permanent injunction restraining the defendants from changing the nature of the suit land and excavating earth from the joint land. In the alternative, the prayer for mandatory injunction was also made while claiming that if the defendants succeed in their illegal motive of digging the suit land then a decree of mandatory injunction be passed in favour of the plaintiffs.

2. There is no dispute between the parties that the suit land is joint property of the plaintiffs as well as the defendants. The proceeding for partition of the property is pending. The First Appellate Court has only restrained the defendants from excavating earth from the joint land as

fertility of the soil will be adversely impacted if the earth upto the depth of 2 feet or more is removed.

3. The learned counsel representing the appellants contends that the property is joint and therefore no suit for injunction is maintainable and the appellants do not wish to excavate any earth from the joint land till the partition takes place.

4. Ordinarily, between the co-sharers, the suit for injunction is not maintainable, however, if the damage is being done to the joint property, a decree for injunction can be passed to protect the interest of the parties.

5. Since the First Appellate Court has only restrained the appellants to excavate earth till the decree for partition is passed, this court does not find it appropriate to interfere.

6. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

7. Dismissed.

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

November 22, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO