In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 3446 of 2022

Date of Decision: 17.10.2023

Mahinder Singh

... Petitioner(s)

Versus

Sanjay Kumar (Deceased) through his Legal Representatives and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Rajesh Goyal, Advocate
for the petitioner(s).

Ms. Amanpreet, Advocate
for Mr. Puneet Kakkar, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. Through this revision petition, the petitioner (plaintiff No.1 in the suit) challenges the correctness of the order passed by the First Appellate Court while reversing the order of the trial Court granting injunction in his favour. In substance, the petitioner claims that the land measuring 106 kanals and 15 marlas is a joint property and the respondent should be restrained from raising any construction till the property is partitioned.

2. On the other hand, the respondent No.1 claims that he has purchased the land measuring 1 kanal and 1 marla vide sale deed dated 29.11.2018, and he wants to construct a boundary wall and a shed for tethering his cattle. The trial Court has granted an injunction, whereas the First Appellate Court has reversed the same.

3. The learned counsel representing the petitioner contends that if

DEEPAK KUMAR BHARDWAJ
2023.10.19 10:31
I attest to the accuracy and
integrity of this document

the defendant No.1 is permitted to construct the building, the nature of the property will change and the defendants are raising construction on the front portion.

4. On the other hand, the learned counsel representing the respondent No.1 submits that the defendant No.1 is only raising a construction in order to secure his position and utilize the land for the purpose.

5. Before injunction is granted in favour of a party, the Court is required to apply a well known triple test i.e. (i) *prima facie* case, (ii) the balance of convenience and (iii) an irreparable loss and injury which the party is likely to suffer if the injunction is not granted.

6. In this case, the construction is sought to be raised only on a plot which is less than 1% of the total joint land. The plaintiff No.1 is in possession of 50% of the property as per his share. The defendant No.1 is constructing a boundary wall and a shed only to secure his possession. Moreover, the rights of the plaintiffs are secured as the rule of *lis pendens* applies to the property in dispute.

7. Keeping in view the aforesaid facts, no ground is made out to interfere. Hence, the present revision petition is dismissed.

(Anil Kshetarpal)
Judge

October 17, 2023
"DK"

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

DEEPAK KUMAR BHARDWAJ
2023.10.19 10:31
I attest to the accuracy and
integrity of this document