

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

142

CR-2391-2021 (O&M)
Date of decision: 14.09.2023

SUMAN DEVI AND ORS

..Petitioners

Versus

HIMANSHU AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sumit Sangwan, Advocate
for the petitioners.

Mr. R.A. Sheoran, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. The petitioners before this Court are the defendants in plaintiffs suit for grant of decree of permanent injunction restraining them from raising construction. There is a serious dispute between Sh. Satyavir Singh and Smt. Birmati on the one side and Smt. Saroj Kumari and her son Sh. Himanshu on other side. Smt. Saroj Kumari is daughter-in-law of Sh. Satyavir Singh and Smt. Birmati. The total land holding of the family is 122 kanal and 2 marlas located in village Jhojhu Kalan, Tehsil and District Charkhi Dadri. In the beginning, Sh. Narender son of Sh. Satyavir Singh executed a transfer deed on 21.01.2021 in favour of his father Sh. Satyavir Singh with respect to 27 kanal and 1.80 marlas. Subsequently, Sh. Satyavir Singh transferred the land measuring 71 kanal and 7.16 marlas in favour of his son Sh. Narender and to the extent of 16 kanal and 3.20 marlas and 55 kanal and 33.26 in favour of his grand-son Sh. Himanshu. On 19.03.2021, Smt. Birmati wife of Sh. Satyavir Singh sold land measuring 27 kanal and

1.8 marlas in favour of Sh. Kabul Singh and Smt. Monika for the amount of Rs.61,000/- Thereafter, on 29.01.2021, Sh. Satyavir Singh and Smt. Birmati is stated to have entered into an agreement to sell in favour of Sh. Kabul Singh with respect to the land around 58 kanals. On 12.04.2021, Sh. Satyavir Singh has executed a sale deed in favour of Sh. Kabul Singh, pursuant to the agreement to sell dated 29.01.2021. Sh. Kabul Singh and Smt. Monika in turn has sold the property in the shape of various small plots in favour of the petitioners, who are defendants. The detail of the sale deeds are as under:-

“Vide Sale Deed No.772 dated 27.04.2021, 0 Kanal 5.50 Marla i.e. 166.66 square yards purchased by defendant No.1 and Sale Deed No.773 dated 27.04.2021, 0 kanal 3.33 Marla i.e. 100 square yards purchased by defendant No.2 and Sale Deed No.774 dated 27.04.2021, 0 Kanal 9.70 Marla i.e. 294 square yards, purchased by defendant No.3 and Sale Deed No.775 dated 27.04.2021, 0 Kanal 5.30 Marla i.e. 160 square yards, purchased by defendant No.4, Sale Deed No.776 dated 27.04.2021, 0 Kanal 8.80 Marla i.e. 266.66 square yards, purchased by defendant No.5 and Sale Deed No.777 dated 27.04.2021, 0 Kanal 5.84 Marla i.e. 176.54 square yards, purchased by defendant No.6 and Sale Deed No.778 dated 27.04.2021, 0 Kanal 8.80 Marla i.e. 266.66 square yards, purchased by defendant No.7 and Sale Deed No.779 dated 27.04.2021, 0 Kanal 8.80 Marla i.e. 266.66 square yards, purchased by defendant No.8.”

2. Sh. Satyavir Singh has filed a petition under Maintenance and Welfare of Parents and Senior Citizens Act, 2007, challenging the transfer of land in favour of Sh. Narender and Sh. Himanshu vide transfer deed dated 18.03.2021. Sh. Satyavir Singh also filed a separate suit for the grant of injunction against Smt. Saroj Kumari and Sh. Himanshu, in which injunction was granted, however, the same was dismissed.

3. While deciding application under Order XXXIX Rule 1 and 2, the trial Court refused to grant injunction restraining the petitioners, who are small plot holders from constructing their buildings. However, the First Appellate Court has set aside the order passed by the trial Court and restrained the petitioners to carry on with the construction.

4. On 14.10.2021, this Court has permitted the petitioners to continue with the construction but it shall be subject to the final outcome of the revision petition. The learned counsel representing the parties admit that the major part of the construction has already been completed. It has also been brought to the notice of the Court that the partition proceedings initiated by Smt. Saroj Kumari and Sh. Himanshu are pending before the revenue authorities.

5. The First Appellate Court has set aside the order passed by the trial Court while granting injunction in favour of the plaintiffs on the ground that the parties are co-sharers and any construction on the property shall result in changing its nature.

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

7. On the one hand, the learned counsel representing the petitioners contend that the sale deeds in favour of the petitioners herein are not subject matter of challenge in any suit. He submits that partition proceedings are pending and they should be permitted to complete the constructions without prejudice to the rights of the plaintiffs. He submits that the petitioners shall not claim any equity on account of constructions, which has been carried out during the pendency of the suit.

8. On the other hand, the learned counsel representing the respondents (plaintiffs) submit that any construction would prejudice the rights of the plaintiffs who are widow and minor child of Sh. Narender Singh son of Sh. Satyavir Singh. While relying upon the judgment passed in **CR-9101-2017, titled as “Shri Puran Singh Vs. Kuldeep Singh and another, decided on 03.07.2018**, he submits that changing the nature of the property would result in irreparable loss and injury, which cannot be compensated later on.

9. This Court has considered the submissions of the learned counsel representing the parties.

10. Before an order of injunction is passed, the Court is expected to apply three tests namely:-

- i. Prima facie case in favour of the plaintiffs;
- ii. Balance of convenience in favour of the plaintiffs; and
- iii. Irreparable loss and injury which the plaintiffs are likely to suffer, if the injunction is not granted.

11. If we apply these three tests to the facts of the present case, the plaintiffs miserably fail. At the cost of repetition, the petitioners herein are small plot holders, who have purchased the property after paying sale consideration. They have right to utilize the plots. The construction, if any, on the small area would result in value addition and does not result in diminishing the value of the property. In **Shri Puran Singh’s case (supra)**, the Court noticed that if the steps taken by the party results in diminishing the value then the Court can restrain the other party from taking such steps which diminishes the value and utility of the property.

12. Moreover, it is well settled law that ordinarily a co-sharer is not entitled to injunct other co-sharer from utilizing the property. Ultimately, the rights of the parties shall have to be decided at the time of partition.

13. If the constructed area falls in the share of the plaintiffs, the defendants shall not claim any compensation and they will have to remove the same at their own cost.

14. Keeping in view the aforesaid facts, the impugned order is set aside. The injunction application shall stand dismissed with the observations that the petitioners shall not claim any equity at the time of final partition.

15. Disposed of accordingly.

16. Needless to observe that the observations made by this Court or in the impugned order shall not construed as final expression on the merits of the case.

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

September 14th, 2023

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**(ANIL KSHETARPAL)
JUDGE**

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