

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

**Civil Revision No.5522 of 2022 (O&M)
Date of Decision: 25.01.2023.**

Dharmender & others

...Petitioners

Versus

Satish and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Ravinder Khola Advocate
for Mr.R.K.Chaudhary, Advocate,
for the petitioners.

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MEENAKSHI I. MEHTA, J.(ORAL)

By way of this revision-petition, the petitioners-defendants (here-in-after to be referred as 'the defendants') have laid challenge to the order dated 22.09.2019 (Annexure P-2) passed by learned Civil Judge (Junior Division), Pataudi (for short 'the trial Court'), on the application moved by the respondents-plaintiffs (here-in-after to be referred as 'the plaintiffs') under Order 39 Rules 1 & 2 CPC and they have also assailed the judgment (Annexure P-4) handed down by learned Additional District Judge, Gurugram (for short 'the Appellate Court') on 13.05.2022, whereby the appeal preferred by them (defendants) against order Annexure P-2 has been dismissed.

2. Bereft of unnecessary details, the facts leading to the filing of the present revision petition, are that the plaintiffs filed a Civil Suit against

the defendants for seeking the decree for possession of the suit property, by way of its partition by metes and bounds, while averring that both the parties were co-owners in the said property to the extent of half share each. They also moved the above-mentioned application for seeking ad-interim injunction against the defendants and the trial Court disposed of the said application vide the impugned order Annexure P-2, restraining both the parties from raising any construction in the suit property and changing its nature till the decision of the Suit. Then, the defendants filed an appeal against this order and the same has been dismissed by the Appellate Court vide the impugned judgment Annexure P-4.

3. I have heard learned counsel for the petitioners-defendants in the instant revision petition, at the preliminary stage and have also perused the file carefully.

4. Learned counsel for the defendants contends that the grandfather of the parties named Bhawani had affected an oral partition of the suit property during his life time and since then, the parties are continuing in possession over the portions of the same, as had fallen to their respective shares but both the Courts below have ignored the afore-said fact and have wrongly allowed the prayer of the plaintiffs for the grant of an ad-interim injunction and therefore, the impugned order as well as the judgment are not legally sustainable and hence, the same deserve to be set aside.

5. However, the above-raised contentions are devoid of any merit because the edifice of the defence of the defendants solely rests upon the factum of the oral partition of the suit property, as claimed by them to have

been affected by their grand-father but however, the question as to whether any such oral partition did ever actually take place or not, can and shall be looked into and adjudicated upon by the trial Court at the appropriate stage after appreciating and evaluating the evidence, as may be adduced by both the parties on the record in support of their respective contentions in this regard and the same cannot be decided at this stage. To add to it, both the Courts below have not only restrained the defendants from raising any construction over the suit property and from changing its nature and rather, the plaintiffs have also been restrained from doing so.

6. In view of the fore-going discussion, this Court is of the considered opinion that the impugned order and the judgment do not suffer from any illegality, infirmity, irregularity or perversity so as to warrant any interference by this Court. Resultantly, the revision petition in hand, being *sans* any merit, stands dismissed.

7. However, it is clarified that nothing contained here-in-before shall be construed to be an expression of the opinion of this Court on the merits of the Civil Suit, pending before the trial Court.

25.01.2023

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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
No