

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

143

2024:PHHC:017145

**CR-30-2023 (O&M)
Date of decision: 07.02.2024**

HARBIR

..Petitioner

Versus

DHARAMBIR AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S. Malik, Advocate
for the petitioner.

Mr. Sachin Miglani, Advocate
and Mr. Yashpal, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. The petitioner's suit for possession by way of partition of the non-agricultural land is pending before the Civil Court. In the meanwhile, he also filed an application for grant of temporary injunction restraining the defendants from raising construction. The trial Court granted injunction, however, the same has been vacated by the First Appellate Court. The correctness of the order passed by the First Appellate Court is challenged in this revision petition.

2. The learned counsel representing the petitioner submits that the nature of the property will be changed and the respondents will claim the constructed portion during the process of final partition.

3. On the other hand, the learned counsel representing the respondent submits that they should be allowed to continue with the construction at their own risk and they shall not claim any equity on the ground of construction.

4. Keeping in view the aforesaid facts, it would not be appropriate to restrain the defendants from utilizing the property particularly when it is for non-agricultural purpose. However, the construction, if any, carried out by the defendants will not entitle them to claim any preference to the constructed portion. If in final partition, the constructed portion falls within the share of the plaintiff, the respondents will either remove the construction or hand over the constructed portion to the plaintiff as it is without claiming any compensation.

5. With these observations, the present petition is disposed of.

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

February 07th, 2024
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(ANIL KSHETARPAL)
JUDGE

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