



CR-3181-2024 (O&M)

1

**135 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CR-3181-2024 (O&M)**

Date of decision: 03.07.2024

Dharam Singh and others

....Petitioners

Versus

Darshpreet Kaur and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.S.S.Rangi, Advocate and
Mr. Ramanpreet Singh, Advocate for the petitioners

Mr. Santosh Sharma, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. In this revision petition, the defendants assail the correctness of the order of injunction passed by both the courts below restraining them from renovating/reconstructing their sheds in the suit property.

2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

3. The parties to the litigation are related to each other. They are successors-in-interest of a common ancestor Surjit Singh. The respondents (plaintiffs) filed a civil suit for the grant of decree of declaration that the plaintiffs and the defendants are joint owners of the property measuring 300 sq. yards out of 546 sq. yards. They also prayed for the grant of temporary injunction. The defendants, while contesting the suit, claimed that the suit property exclusively belongs to them.

While contesting the application under Order XXXIX Rule 1 &2 of the



Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), the defendants claimed that they are using the property for work of laundry and steam press with respect to their hosiery business, which is being run in the adjoining factory premises. They resisted the grant of injunction on the ground that they plan to renovate the shed, which was in a dilapidated condition. However, both the courts passed orders restraining the defendants. The courts have granted injunction on the ground that though the defendants have claimed that they plan to renovate but from the photographs, it is evident that new construction work has been carried out by the defendants.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. Learned counsel representing the petitioners, while reiterating his statement noted in the order dated 23.05.2024, submits that the petitioners should be permitted to complete their construction by putting a shed over the pillars, which has already been partially constructed. He submits that the petitioners may be permitted to use the premises as decision of the suit is likely to take time and in the absence of a proper shed, the petitioners will not be able to properly use the same.

6. Per contra, the learned counsel representing the respondents (plaintiffs in the suit) submits that the defendants are guilty of concealment of material facts as petitioner no.1 Dharam Singh executed a sale deed in favour of two sons with respect to 1600 sq. yards by including the joint property. He submits that the petitioners previously



filed a civil suit in which status quo was granted, however, they withdrew the same. He submits that under the garb of renovation, the petitioners are carrying out reconstruction.

7. This Court has considered the submissions made by the learned counsel representing the parties.

8. Before granting injunction, the court is required to apply three well known tests namely;

a) prima facie case in favour of the plaintiffs

b) balance of convenience

c) irreparable loss and injury which the party may suffer if the injunction is not granted.

9. At the best the plaintiffs' case is that they are the joint owners with the defendants. From perusal of the record, it is evident that the property is situated in an area which is being used for running a small scale industry. There is no dispute that previously the defendants (petitioners) were utilising the area by constructing a shed with iron sheets. The defendants have installed their machinery to carry out work of laundry and steam press. Even if the defendants are permitted to put new iron or cemented sheets over the pillars, there will be no permanent change in the nature of the property. The defendants have already made a statement that if any of the suit property falls in the share of the plaintiffs, they will not claim any compensation for the construction. The decision of the suit is likely to take a long time and if the parties are not permitted to use the property, it will lead to wastage of resources.

On the other hand, if the plaintiffs succeed they will get the property

**CR-3181-2024 (O&M)****4**

with construction. The construction of a shed does not result in permanent change in the nature of the property. It is evident that both the courts have failed to apply the three tests, which have already been noticed. The parties are yet to lead evidence.

10. In view of the aforesaid facts and discussion, this Court is of the view that the courts below have erred in obstructing the defendants from completing the renovation/re-construction of the shed by granting injunction. However, the petitioners shall remain bound by their statement. If ultimately the suit of the plaintiffs is decreed and the disputed portion falls in the share of the plaintiffs, they shall not claim any compensation or equity on account of the construction. The defendants shall hand over the constructed portion as it is without claiming any compensation from the plaintiffs.

11. Disposed of accordingly.

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

03.07.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE