



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4542-2024 (O&M)

Date of Decision : 18.09.2024

Lakhpat @ Lakhpat Ram & Ors

... Petitioner(s)

Versus

Puran & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ajay Jain, Advocate for the petitioners.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 09.07.2024 passed by the Trial Court dismissing the application filed by the plaintiff-petitioners under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 as well as the order dated 02.08.2024 passed by the First Appellate Court whereby the appeal preferred by the plaintiff-petitioners was also dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-petitioners herein filed a suit for permanent injunction averring therein that they were joint owners in possession of land comprised in Khewat No.4, Khatoni No.3, Rect. No.12, Killa No.19(8-0), 20/1(4-0), 21(8-0), 22(8-0), 23(7-12), Kita 5 measuring 35 kanals 12 marlas situated within the revenue estate of Village Patuhera, Teshil Bawal, District Rewari. It was further stated that the plaintiff-petitioners had 11/89 share in the property mentioned in the plaint. It was further averred that the suit property was joint between the parties, however, a mutual partition had been arrived at and as per the mutual partition the plaintiff-petitioners were in the continuous cultivating

possession of the suit property. It was further averred in para 3 of the plaint that the property had not been partitioned between the parties and that the defendant-respondent No.1 was raising construction over the suit property without any right and that he had no legal right to raise the illegal construction. It was further the case set up that the defendant-respondent No.1 was trying to diminish the value and utility of the land and that the property in dispute falling in Rect. No.12 Killa Nos.21, 22 and 23 was most valuable piece of land abutting the metalled road and if the defendant-respondent No.1 succeeded in raising the construction, the purpose of the suit would be frustrated. It was also averred in the plaint that a partition application had been filed before the Assistant Collector 1st Grade, Bawal which was still pending and hence the present suit for injunction. Alongwith the suit an application for interim injunction was also filed. Written statement was filed by the defendant-respondent No.1. The Trial Court vide order dated 09.07.2024 dismissed the application under Order 39 Rules 1 and 2 CPC. Aggrieved by the same, an appeal was preferred which appeal was also dismissed vide order dated 02.08.2024. Hence, the present revision petition.

3. Learned counsel for the plaintiff-petitioners would contend that a mutual partition had taken place between the parties and the parties were in cultivating possession over their respective areas. It is further the contention of the learned counsel that the plaintiff-petitioners herein were in cultivating possession of Rect. No.12 Killa No.22, however, in the revenue record the property was shown as joint. It was further claimed that the said area was a

most valuable piece of land as it was abutting the metalled road and that the defendant-respondent No.1 was raising construction on the same which would lead to irreparable loss and injury to the plaintiff-petitioners herein. The learned counsel has further argued that the defendant-respondent No.1 is owner of 3 kanals 17 marlas of land and out of the said land 10 marlas of land already stands sold and hence the defendant-respondent No.1 is raising construction on more than his share of the land. The learned counsel for the plaintiff-petitioners has admitted that there is a partition application which has been filed before the Assistant Collector 1st Grade, Bawal and the same is still pending.

4. I have heard the learned counsel for the plaintiff-petitioners.

5. In the present case both the Courts have concurrently observed that in the revenue record the property is reflected as being joint. Admittedly, the plaintiff-petitioners herein themselves have filed an application for partition before the Assistant Collector 1st Grade, Bawal. It has further been observed by the Trial Court that both the parties had produced photographs showing construction which had been raised by both the parties. Admittedly, the parties are co-sharers. A Division Bench of this Court in the case of ***Bachan Singh Vs. Swaran Singh [2000(3) PLR 416]*** has held as under :

“15. On a consideration of the judicial pronouncements on the subject, we are of the opinion that:

(i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in

possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession.

(ii) Mere making of construction or improvement of, in the common property does not' amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to' prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which, is detrimental to his interest.

In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction restraining the co-owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner.”

6. The argument of the learned counsel for the plaintiff-petitioners that the defendant-respondent No.1 is raising construction on more than his share which argument is stated to have been raised before the First Appellate Court in the grounds of appeal, deserves to be rejected on the ground that there is no pleading in this regard in the suit and in the absence of pleadings in the suit the same cannot be looked into.

7. In view of the law laid down by the Division Bench of this Court in the case of **Bachan Singh** (supra) and keeping in view the fact that the parties are admittedly co-sharers in the suit property, no injunction can be granted especially in view of the fact that the partition proceedings are

still pending before the Assistant Collector 1st Grade, Bawal. Accordingly, the present revision petition being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

18.09.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO