

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5090-2023 (O&M)
Date of Decision: February 13, 2024

Satpal and another
...Petitioners
Versus
Sahi Ram
...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: M.Pankaj Gupta, Advocate
for the petitioners.
Mr.Abhinav Aggarwal, Advocate
for the respondent.

ARCHANA PURI, J.

Challenge in the present petition is to the order dated 24.07.2023 (Annexure P-3) and order dated 18.08.2023 (Anneuxre P-4), vide which, learned Court below had dismissed the application under Order 39 Rule 1 and 2 CPC and the requisite order stood affirmed by learned lower Appellate Court.

For the convenience of discussion, the parties are referred to as making appearance before learned Court below.

Facts germane, to be noticed, are as follows:-

That, initially, petitioners-plaintiffs Satpal and Satish Kumar had filed a suit against respondent-defendant, for seeking mandatory injunction, to

direct the defendant Sahi Ram, to remove the construction made over the joint undivided land and further, also sought issuance of permanent injunction to restrain the defendant from changing the nature of the suit property from agricultural land to residential or commercial land, by raising any kind of construction over the valuable land. In the plaint, the plaintiffs pleaded that plaintiffs and the defendant are related inter se, as the defendant is real brother of plaintiff No.1 and uncle of plaintiff No.2. The plaintiffs and defendants, along with other co-sharers are joint owners and in possession of the land measuring 38 Kanals 4 Marlas, which comprised in Khewat No. 142//125, Khatoni No.210, Rect. No.25, Killa No.17/2(7-10), 18(6-14), 19(8-0), 20(8-0), 21(8-0), total Kitts 5, vide jamabandi for the year 2017-18, Hadbast No.12, situated at Village Bijna, Tehsil Gharaunda, District Karnal. The said land has not been partitioned with metes and bounds by the competent authority. However, plaintiff No.1 and other co-sharer had already filed the petition for partition of the abovesaid joint land and the same is pending before Assistant Collector Grade IInd, Gharaunda, Karnal and the same is fixed for filing the objections on Naksha Bey.

However, further it has been averred that the defendant is head-strong person and with malafide intention, want to change the nature of the suit land and on 20.06.2023, approached the suit land, which comprised in Khewat No.142, Khatoni No.210, Rect. No.25, Killa No.17/2 (7-10), i.e. the suit land, situated on the bank of main road, with labour and mason, for raising construction over the most valuable prime land. The defendant tried to raise the construction, but he could not succeed in his ill motive and then

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again on 22.06.2022, plaintiff approached the suit land and found that the defendant, after digging foundation, started construction over the most valuable land. In the given circumstances, along with the suit, an application under Section 39 Rule 1 and 2 CPC was filed to restrain the defendant, from changing the nature of the suit land from agricultural land to residential or commercial land, by raising any kind of construction over the suit land.

However, in the written statement, preliminary objections were taken, thereby, disputing the maintainability of the suit and that filing of the same is abuse of process of law and that the plaintiff is estopped by his own act and conduct, from filing the present suit. He has not come to the Court with clean hands and has concealed the true and material facts. On merits, plaintiffs, defendant and others, being co-sharers, as such, has not even challenged in the written statement. However, so far as, averments of raising of construction are concerned, it was averred that defendant had already raised construction of his house and now, he is only renovating his house and no new construction is being raised by him. Since, the partition proceedings qua the suit land are pending, before the revenue Court, therefore, the present suit is not maintainable.

After hearing learned counsel for the parties, vide order dated 24.07.2023, the application under Order 39 Rule 1 and 2 CPC was dismissed.

Being aggrieved, the plaintiffs have filed appeal and vide impugned order dated 18.08.2023, the appeal was also dismissed by learned lower Appellate Court, thereby, affirming the order passed by learned Court

below.

Being dissatisfied with two affirmatory orders passed by learned Courts below, the petitioners-plaintiffs have filed the present revision petition.

In pursuance of the notice issued, respondent made appearance through counsel.

Learned counsel for the parties heard.

Relationship existing between the parties, as asserted in the plaint, as such, is not disputed. Admittedly, the plaintiffs and the defendants, along with others, are joint owners and in possession of the land measuring 38 Kanals 4 Marla, the detail whereof, has been reproduced in the earlier portion of the judgment. Also, it is not disputed that qua the suit land, petition for partition, has been filed by plaintiff No.1, which is pending adjudication before Assistant Collector Grade IInd, Gharaunda and is at the stage of objections on Naksha Bey.

It is the claim that the defendant is raising construction over Killa No.17/2 (7-10). From the partition petition, copy whereof is Annexure P-6, it is evident that plaintiff No.1-Satpal along with his wife Krishna had filed a petition for partition regarding land measuring 38 Kanal 4 Marla against defendant-Sahi Ram and others. Even, Satish-plaintiff No.2 has been impleaded as one of the LRs of Mange Ram, in the said partition proceeding. This partition proceeding relates to land measuring 38 Kanal 4 Marla, more specifically of Killa No.17/2 (7-10), relating to which, the construction is stated to be raised by the defendant.

Both Learned courts below had observed in the impugned order that in the partition petition filed by the plaintiffs, they made a submission that the partition be done, keeping in view the dera/house in possession and the Kurra of the applicants, be separated from the respondent and Kurra of the land of the applicants be completed by providing passage near the dera/house. Meaning thereby, the plaintiffs have raised construction of dera/house in the suit land.

In the given circumstances, it is pertinent to mention that now plaintiffs has filed the application under Order 39 Rule 1 and 2 CPC, to restrain the defendant from raising construction over the suit property. In the impugned order passed by learned Court below, it has also been observed that the applicants-plaintiffs did not dispute that the defendant has already raised construction. No doubt, it is stated in the written statement about renovation being conducted over the suit property, but however, since, it is the plaintiffs, who have come to the Court to seek discretionary relief, it was required on their part to approach the Court with clean hands and disclose all the material facts, having bearing on the order to be passed on the application for interim injunction. However, in this regard, suffice to make mention that the plaintiffs had themselves raised construction of the dera/house, in the suit property and are enjoying the property, but they intend to restrain the defendant, who is also co-sharer in the property in use, from enjoying the property.

During the course of the arguments, learned counsel for the petitioners submitted that house of the petitioners is raised in Khewat No.24,

which is not subject matter of the partition proceedings. However, nowhere, either in the pleadings of the case in hand, or in the partition proceedings, it has been so mentioned. In the given circumstances, the submission, so made, is not tenable, more particularly, when in the partition proceeding, the petitioners-plaintiffs themselves have mentioned about their dera/house. If it was not the part of the subject land of the partition proceeding, there was no necessity for mentioning of the partition to be effected, keeping in view the dera/house in their possession.

In the given circumstances, malafide on the part of the petitioners-plaintiffs, as such, is evident. One co-sharer, as such, cannot himself raise the construction and deny raising of the construction, at the instance of other co-sharers, as evident from the partition proceedings.

All the co-sharers have right to enjoy the property in a husband like manner and no co-sharer can solely enjoy the property, to deprive the use of the joint property, by the other co-sharers. He could seek injunction to so restrain, if he is in exclusive possession. What is happening in the case is that plaintiffs themselves raised the construction and now, they want to deprive/restrain the defendant from raising construction in the joint land. Thus, malafide is writ large, on the part of the petitioners-plaintiffs.

In view of the above fact situation, more particularly, considering the conduct of the petitioners-plaintiffs, learned Courts below have rightly denied interim relief of injunction to them. There is no illegality or irregularity in the orders, so passed, which warrant interference by this Court.

Hence, the revision petition sans merit and the same is hereby dismissed.

As the main case is decided, the pending civil misc. applications, if any, stand disposed of.

February 13, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No