



CR-5431-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(118)

CR-5431-2024

Date of decision: - 05.12.2024

Om Parkash

....Petitioner

Versus

Rinku and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Sumit Sharma, Advocate, for the petitioner.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 01.07.2024 passed by the Additional District Judge, Bhiwani in Civil Misc. Appeal No.CMA/59/2024 and order dated 20.05.2024 passed by the Civil Judge (Junior Division) in Civil Suit No.CS/471/2024 titled as 'Om Parkash and others Vs. Rinku and others, whereby the application under Order 39 Rules 1 and 2 read with Section 151 CPC filed by the present revisionist has been dismissed.

2. Learned counsel for the petitioner has submitted that the parties are co-sharers and the partition proceedings are pending before the Tehsildar and the primary reason to challenge the impugned order is that the construction which is being raised by the respondents should not create any vested right in favour of the respondents so as to entitle them to get allotment of the said land on which the construction is being raised and that the said construction which is being raised be made subject to the orders passed in the partition proceedings.

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3. It is a matter of settled law that a co-owner cannot injunct and restrain other co-owners from raising construction on portions of joint land in exclusive possession of other co-owners, and the appropriate remedy for the co-sharer is to seek partition and thus, the impugned orders have been rightly passed.

4. Needless to say that in case any construction is raised by either of the parties, the same would be subject to the partition proceeding and the raising of construction would not create any equity in favour of either of the parties and the partition proceeding would be carried out in accordance with law and after taking into consideration all aspects including the aspect of value of land and the principle of consolidation.

5. It would be relevant to mention that notice of motion has not been issued to the respondents as no order prejudicial to the respondents has been passed and the issuance of any notice would further delay the proceedings in the suit and would also entail expenses for respondents in order to defend the present petition. However, it would be open to respondents to move an application for recalling the present order, in case they have any grievance against the present order.

6. Present revision petition stands disposed of accordingly.

7. Pending applications, if any, also stand disposed of in view of the present order.

December 05, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No