

2024:PHHC:048805

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

CR-6050-2023 (O&M)
Date of decision: 09.04.2024

Meena Gupta @ Neena Gupta and others
...Petitioners

Versus

Sadhu Ram
..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Pritam Singh Saini,
Ms. Kanchan Sindhu,
Ms. Vamika Johar, Advocates for the petitioners

Mr. Amrik Singh Virk, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. This revision petition has been filed by the defendants in order to assail the correctness of the orders passed by the courts below while restraining them from changing the nature of the property or in other words constructing the plots. The plaintiff claims that he has purchased a share out of the joint land to the extent of 2 kanals 9 marlas out of 55 kanals and 10 marlas vide registered sale deed dated 25.09.2019. The defendants, on the other hand, claim that they have purchased three plots with specific dimensions and plot numbers in a colony. The plaintiff filed a suit for permanent injunction claiming that he is a co-sharer and the defendants may be restrained from raising construction. He admits that certain houses have already been constructed in the area.

2. On the other hand, the defendants, while contesting the suit, claim that various residential houses have been constructed and the

plaintiff never objected. Both the courts have allowed the application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') on the ground that parties are co-sharers and co-owners.

3. Learned counsel representing the petitioners submits that the defendants will suffer serious prejudice and irreparable loss if the injunction is continued. He submits that a large number of houses/shops have already been constructed and plaintiff has purchased the share in the property with open eyes, particularly when a colony has already been carved out.

4. Per contra, the learned counsel representing the respondent submits that the suit for partition is pending and therefore, the orders passed by the courts below should not be interfered with.

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

6. Before granting injunction the court is required to apply following three tests:-

i) prima facie case

ii) balance of convenience

iii) irreparable loss and injury which a party is likely to suffer.

7. If we apply these three tests, the plaintiff's case fails. The plaintiff is a purchaser of a share in the undivided portion. He has purchased property only three years before the filing of the suit. A

perusal of the lay out plan of the colony shows that the plots have been carved out and houses/shops have been constructed.

8. Keeping in view the aforesaid facts, if the injunction is allowed to continue, the defendants, who have purchased the property for valuable sale consideration, shall stand deprived of its user. They may have invested their hard earned money to purchase small plots in order to provide a roof to their family members.

9. Keeping in view the aforesaid facts, the order passed by the courts below is modified. It is ordered that the defendants shall be at liberty to raise construction, however, they shall not claim any equity as well as compensation for construction in case in the partition proceedings, the suit property falls to the share of the plaintiff.

10. Disposed of.

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

09.04.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE