

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

134

2024:PHHC:000944

CR-30-2024

Date of decision: 08.01.2024

OMBIR

..Petitioner

Versus

MUKESH KUMAR AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Kumar Gupta, Advocate
for the petitioner.

ANIL KSHETARPAL, J(Oral)

1. This revision petition has been filed by the plaintiffs to assail the correctness of order passed by the learned Additional District Judge on 11.12.2023, while deciding a miscellaneous appeal arising from an order passed by the trial Court under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908. The parties to the suit are co-sharers. Proceeding for partition of the land is pending before the competent authority. The plaintiffs filed a suit for grant of decree of permanent injunction restraining the defendants from raising construction on the valuable portion of the aforesaid agricultural land. The trial Court directed the parties to maintain a status quo, however, before the First Appellate Court, the defendants gave an undertaking that they will remove the construction, which is in the form of accommodation of milk yielding animals, if the aforesaid portion falls in the in the share of the plaintiffs in the partition proceedings. Thus, the First Appellate Court permitted the respondent to carry out the repair/renovation and construct temporary structure in order to utilize the land for keeping their milk yielding animals protected from the extreme weather.

2. The learned counsel representing the petitioner submits that the respondent had filed a petition for partition and if he is permitted to further construct, the same would not remain agricultural land and hence, the partition proceeding would fail.

3. This Court has considered the submissions of the learned counsel representing the petitioner.

4. The partition proceedings are to be decided on the basis of the status of the land, which was in existence on the day, the partition proceedings were filed. The nature of the structure, which the respondent wants to repair/renovate/construct is incidental to the usage of the land for agricultural purposes. Once, the respondent has given undertaking that he shall not claim any benefit for the construction, if any, raised, there is no ground to interfere.

5. Hence, dismissed accordingly.

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

January 08th, 2024

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No