

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****120****CR-2654-2024 (O&M)****Date of decision: 04.02.2025****Tirath Singh****...Petitioner(s)****Vs.****Gurmail Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Navpreet Singh, Advocate for
Mr. S.S.Sarwara, Advocate for the petitioner.

NIDHI GUPTA, J.

The present civil revision petition has been filed by the petitioner/plaintiff under Article 227 of the Constitution of India for setting aside the order dated 21.03.2022 (Annexure P-5) passed by learned Civil Judge (Junior Division), Patiala, in case Civil Suit No. 1223 of 2021 dated 12.07.2021 titled as "*Tirath Singh vs. Gurmail Singh*" whereby the application filed by the petitioner under Order 39 Rule 1 and 2 CPC read with Section 151 CPC was dismissed; **and** order dated 20.03.2024 (Annexure P-7) whereby the appeal i.e. AO No. 69 of 2022 dated 21.04.2022 titled as "*Tirath Singh vs. Gurmail Singh*" filed by the petitioner against the order dated 21.03.2022 was dismissed by learned Additional District Judge, Patiala.

2. Brief facts of the case are that as per the Jamabandi (Ex.P1), the petitioner/plaintiff as well as the respondent/defendant are co-sharers in the suit property. The suit land has not been partitioned till



date; and a suit for partition is pending before the learned Assistant Collector, 1st Grade, Patiala. It is the case of the petitioner that the respondent/defendant wanted to change the nature of the agricultural land into non agricultural land. As such, the petitioner filed the present suit dated 12.07.2021 (Annexure P-1) seeking Permanent Injunction restraining the defendant, attorney, party-men from raising construction/changing the nature of agriculture land/suit land as described in the plaint (Annexure P-1). Along with the plaint, the petitioner also filed application under Order 39 Rules 1 and 2 CPC read with Section 151 CPC (Annexure P-2). Written statement to the above said suit and application were filed by the respondent (Annexures P-3 and P-4 respectively). Vide the impugned orders dated 21.03.2022 (Annexure P-5), the application of the petitioner under Order 39 Rules 1 and 2 CPC read with Section 151 CPC was dismissed. The said order dated 21.03.2022 (Annexure P-5) was challenged by the petitioner before the learned Additional District Judge, Patiala by way of the appeal (Annexure P-6). Vide order dated 20.03.2024 (Annexure P-7), the appeal of the petitioner has also been dismissed.

3. Learned counsel submits that in dismissing the application of the petitioner seeking ad-interim injunction against the respondent restraining him from raising construction/changing the nature of the suit land, the learned Courts below have failed to appreciate the fact that it is the admitted case of the parties that the suit property is joint property and the same has not yet been partitioned. It is contended that it is well



settled law that the co-sharer has no right to raise the construction without the consent of the other co-sharer; and cannot change the nature of the suit land. The fact that the respondent is raising construction is also visible from the photograph (Annexure P-8). The respondent has also constructed the shop in the suit property, which fact has not been denied by him in his written statement (Annexure P-3). Thus, the impugned orders have been passed on conjectures and surmises without appreciating the above said facts. It is accordingly prayed that the impugned orders be set aside.

4. No other argument has been raised by learned counsel for the petitioner.

5. I have heard learned counsel for the petitioner and perused the case file in great detail.

6. The petitioner is aggrieved of the dismissal of his application under Order 39 Rules 1 and 2 CPC read with Section 151 CPC, whereby the prayer of the petitioner for grant of ad-interim injunction against the respondent/defendant has been denied. It is the admitted case between the parties that the suit property is joint. The Jamabandi Ex. P1 which consists of 24 pages, shows at page no.7 that plaintiff as well as the defendant are co-sharers in the suit property and the plaintiff has 801/62601 share in the suit property and defendant has 2150/62601 share in the suit property. It is also admitted case of the parties that till date no partition has taken place. However, it is the case of the plaintiff that he has already filed the partition proceedings before the revenue



Court, which are pending. It is the established position in law that prior to partition, each co-sharer is the owner of the suit property in its entirety.

7. Furthermore, it has been denied by the respondent in his written statement that he has raised any construction on the spot or trying to change the nature of the suit land. In order to prove that the respondent is raising the construction and trying to raise construction, the petitioner has relied upon photograph Annexure P8. However, nothing is discernible from the said photograph. More over no reliance can be placed upon the said photograph as the same has to be proved in accordance with law. It is not denied by the petitioner that before the learned trial court, the petitioner was unable to prove that the respondent/defendant is raising or is trying to raise any construction. In fact, from the photographs brought on record by the petitioner before the learned trial court, it was found that *"the construction is the old one and it does not show any fresh construction. Therefore, prima-facie the plaintiff has failed to prove that any threat has been given by the defendant to raise the construction on the suit land or that they are trying to change the nature of the property."* It is also established position in law that no injunction can be granted against the co-sharer.

8. Nothing has been shown by the petitioner to this Court to controvert the above findings. Further, I am in agreement with the view taken by the learned trial Court that the most efficacious remedy for the petitioner is to seek partition of the suit property - which is already



stated to be pending. Hence, no ground to interfere in the impugned orders dated 21.03.2022 (Annexure P-5) and 20.3.2024 (Annexure P-7), is made out.

9. The present civil revision petition accordingly, stands **dismissed.**

10. Pending application(s) if any also stand(s) disposed of.

04.02.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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