

Budh Singh and Others Vs Balbir Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 18, 2010

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 151

Citation: (2010) 159 PLR 361

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Judgement

L.N. Mittal, J.

This is revision petition by defendants, who have been unsuccessful in both the courts below.

2. Respondent Balbir Singh, who is brother of defendants, filed suit, wherein the plaintiff moved application under Order 39 Rules 1 and 2 read

with Section 151 of the CPC for temporary injunction. It is alleged by the plaintiff-respondent that the suit land is joint land of the parties and has

not yet been partitioned, but the defendants threatened to raise construction on the suit land and to change the user thereof to deprive the plaintiff

of his due share. The plaintiff accordingly sought temporary injunction restraining the defendants from raising any construction on the suit land and

from changing user thereof without partition, till the final decision of the suit.

3. The defendants, admitted that the land is still joint and has not yet been partitioned. The defendants, however, pleaded that they have right to

raise construction on the land, which is in their exclusive possession. Learned Additional Civil Judge (Senior Division), Bathinda, vide impugned

order dated 01.11.2008 (Annexure P-1), allowed application of plaintiff for temporary injunction and restrained the defendants (appellants herein)

from changing nature of the suit property by raising construction thereon till disposal of the suit. Appeal preferred by the defendants against the said

order has been dismissed by learned Additional District Judge, Fast Track Court, Bathinda, vide judgment dated 16.11.2009 (Annexure P-2).

Feeling still aggrieved, the defendants have preferred the instant revision petition.

4. I have heard learned Counsel for the petitioners and perused the case file.

5. Learned Counsel for the petitioners contended that the plaintiff- respondent has himself raised construction over a part of the joint land, and

therefore, the plaintiff cannot seek injunction against the defendants to restrain them from raising construction over a part of the suit land. The

contention cannot be accepted because from the impugned orders of the courts below, it appears that no such plea has been taken by the

appellants in their written statement or reply to the injunction application. Of course, this argument was also raised before the appellate court.

However, in the absence of pleadings, this argument cannot be raised in appeal or revision. No such argument was even raised before the trial

court and it would depict that no such plea has been taken in the pleadings.

6. Moreover, the alleged construction has not even been raised by the plaintiff-respondent, but has been raised allegedly by his son, who

purchased a part of the suit land.

7. On the other hand, the land is admittedly joint between the parties. Partition proceedings are pending. Consequently, the appellants cannot be

permitted to usurp a part of the joint land in suit by raising construction thereon without seeking partition.

8. In addition to the aforesaid, it may also be noticed that the appellants are prima facie not proved to be in exclusive possession of any part of the

joint land. For this reason as well, the appellants cannot be permitted to raise construction on the joint land without partition. According to revenue

record, parties are in joint possession of the suit land.

9. For the reasons recorded herein above, I find no infirmity or illegality in the impugned orders of the courts below. Temporary injunction has

been rightly granted in favour of plaintiff-respondent. The revision petition is thus without any merit and is accordingly dismissed in limine.

However, nothing observed herein above shall be construed to be an expression of opinion on the merits of the suit.