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

**CR No.7405 of 2024
Date of decision : 17.01.2025**

Avtar Singh

...Petitioner

Versus

Kuldeep Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Naveen Batra, Advocate
for the petitioner.

PANKAJ JAIN, J. (ORAL)

Plaintiff is in revision impugning order dated 30th of October, 2024 whereby defendants No.1 and 12/respondents have been allowed to plaster the walls of their house with the condition that the same shall be subject to partition of the suit property, and that the defendants shall not claim any plaster cost.

2. Plaintiff filed suit for partition with the further relief of decree of permanent injunction restraining the defendants from alienating or creating any charge over the suit property. Along with the plaint, an application was filed under Order XXXIX Rule 1 & 2 CPC seeking grant of temporary injunction in favour of the plaintiff, restraining defendants from raising construction over any specific and valuable portion of the suit property.



3. Suit was contested by the defendants claiming that they are using and enjoying their respective shares and that there was an oral partition between the parties.

4. While adjudicating upon the application filed under Order XXXIX Rule 1 & 2 CPC, Trial Court allowed the application filed by the plaintiff under Order XXXIX Rule 1 & 2 CPC restraining defendant No.1 from alienating and raising any construction over any specific and valuable portion of the suit property.

5. Instant application was moved by defendants No.1 and 12 seeking permission to plaster the walls in order to avoid dampness in the house. It was further claimed that plastering work will not alter the nature of the suit property.

6. The aforesaid application stands allowed by the Trial Court holding as under :

“5. The Court is of the view that if defendants No.1 and 12 are allowed to plaster the above said walls of their house, then it will not change the nature of the suit land nor it will change the nature of suit. Accordingly, in the interest of justice, defendants No.1 and 12 are granted permission only to plaster the aforesaid walls as shown in the photographs attached with the application in hand. However, it is made clear that plaster of walls will be subject to partition of suit property and defendants no.1 and 12 will not claim any plaster cost.xx”



7. Counsel for the petitioner has not been able to point out as to how the plastering of the wall amounts to alteration of the nature of the suit property or ouster of the petitioner.

8. The issue w.r.t. construction of the joint estate by co-sharer stands settled by Division Bench in the case of '**Bachan Singh vs. Swaran Singh – CR No.4549 of 1997** *decided on 6th of March, 2000*, holding as under:

“17. On a consideration of the judicial pronouncements on the subject, we are of the opinion that:

- (i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession.
- (ii) Mere making of construction or improvement of, in the common property does not' amount to ouster.
- (iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to' prevent the diminution of the value and utility of the property.
- (iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which, is detrimental to his interest.”



9. The instant revision petition is dismissed in view of law laid down in *Bachhan Singh's* case (supra) wherein Division Bench held that mere raising construction by a co-sharer would not amount to change/alter in the nature of the property.

10. Ordered accordingly.

January 17, 2025

(Pankaj Jain)

Dpr

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No