

MADAN LAL v. EMAAR MGF LAND LTD. , (2022-3)207 PLR 014 , 2022 PLRonline 2570

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Fateh Deep Singh.

MADAN LAL and others - Appellants,

Versus

M/S EMAAR MGF LAND LTD. And others - Respondents.

CR-1528-2021 (O&M)

Civil Procedure Code 1908 (V of 1908) Section 151 Order 39, Rules 1, 2 - Co-sharers - Suit property is part of a larger area owned by different brothers after inheritance from their father and that the Company is purchaser from one of the cosharers and it is not a case where the plaintiffs/petitioners claimed that they are in exclusive possession of the property in question to the exclusion of other co-sharers and, therefore, all the co-sharers including the Company are deemed to be in possession of the shares and there is no element of ouster brought to the notice - Right title if any of the plaintiff/petitioners is determinable only upon partition and which is yet to be undertaken - Mere raising of construction on joint property by one of the co-sharers cannot be termed to be an act of ouster of other co-sharers - Lower Court granted status quo Appellate Court set aside the order - Order upheld.

Cases referred to:-

1. 2019 PLRonline 3302 (SC), *T. Ramalingeswara Rao (Dead) Through LRs v. N. Madhava Rao.*
2. 1981 PLJ 204, *Bhartu v. Ram Sarup.*
3. (2019-4)196 PLR 785, *Om Parkash v. Rohtash.*

Mr. Sandeep Yadav, for the petitioner. Ms. Sehaj Sandhawalia, for Resps. No.1 to 18.

Fateh Deep Singh, J. -(31st March, 2022) -

CM-2219-CII-2022

In view of the averments made in the application and in the interest of justice, the same is allowed. Documents annexed therewith are taken on record subject to all just exceptions.

CM stands disposed off.

CR-1528-2021

1. A civil suit for permanent injunction was filed by the then plaintiffs in all numbering 08, the present petitioners against the then defendants M/s Emaar MGF Land Limited-respondents before this Court and which matter at the relevant time was pending before the Court of learned Civil Judge, Gurugram, Haryana. While, disposing off an application under Order 39 Rules 1 and 2 read with Section 151 CPC of the plaintiffs, the Court of the learned Civil Judge (Junior Division), Gurugram vide order dated 07.02.2018 allowed the application directing the parties to maintain status quo qua construction and possession of the suit land during the pendency of the suit.

2. The order was challenged by the then defendants-M/s Emaar MGF Land Limited (in short 'the Company') by way of civil miscellaneous appeal wherein the Court of the learned Additional District Judge, Gurugram vide impugned findings dated 13.03.2020 allowed the appeal and set aside the orders of the Court below. It is against this finding, the present civil revision has come about.

3. Heard counsel for the parties and perused the records.

4. As is admitted before this Court in the submissions of the two sides which is well elicited from the records of the case, the plaintiffs/petitioners happen to be the owners of the land in question in respect of which, they had entered into an agreement to sell to the Company. It is also there undisplaced that the property in question is a joint co-sharer undivided property of the plaintiffs' family. The sale agreement is primarily for the purposes of facilitating construction by the Company for commercial/residential buildings. Since, the agreement to sell have been entered into between the parties, whereby, substantial amount had been received by the sellers and possession was handed over to the Company of specific portion of the land and, therefore, in view of the well enshrined principle of law, the Company is deemed to be co-sharer of the property so subject matter of sale transaction. A suit for permanent injunction is purely a discretionary relief based on sound principles of law based on equity and cannot be allowed to be misused to suit the purpose of one of the litigants. It is a matter of common knowledge that properties around Gurugram have seen astronomical rise in their market value and the plaintiffs appears to have fallen prey to mint money and in the process of the same, after getting money have handed over the possession. It is also not displaced that the Company had purchased part of the joint property from one of the brothers and, therefore, is deemed to have stepped into his shoes and become a co-sharer entitled to protect their possession and putting the property to their use. The claim of counsel for the petitioners that the Company is not in possession of the same, cannot be gathered from anything placed before the Court on record. Right title if any of the plaintiff/petitioners is determinable only upon partition and which is yet to be undertaken. The counsel for the Company had led much arguments on the claim that the Company is only trying to raise wall to protect the property and which cannot be termed to be a construction by any means. Moreover, the suit property is part of a larger area owned by different brothers after inheritance from their father and that the

Company is purchaser from one of the cosharers and it is not a case where the plaintiffs/petitioners claimed that they are in exclusive possession of the property in question to the exclusion of other co-sharers and, therefore, all the co-sharers including the Company are deemed to be in possession of the shares and there is no element of ouster brought to the notice of this Court by the petitioners' counsel. Reliance is sought to be placed on the judgment titled as '*T. Ramalingeswara Rao (Dead) Through LRs and another v. N. Madhava Rao and others*'¹ 2019 PLRonline 3302, AIR 2019 SC 1777, which has further drawn analogy from the Full Bench view of this Court laid down in '*Bhartu v. Ram Sarup*'² 1981 PLJ 204 and in a similar view in a judgment titled as '*Om Parkash v. Rohtash and another*'³ (2019-4)196 PLR 785, a Single Bench of this Court has held that a mere raising of construction on joint property by one of the co-sharers cannot be termed to be an act of ouster of other co-sharers. The Court below had detailed at length in the impugned findings and it could not be pointed out by the petitioners' side how there has been illegality and perversity in these findings which needs to be upheld.

The revision being hopelessly without merits stands dismissed.

R.M.S.

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Petition dismissed.