

IN THE COURT OF WAJID ALI,
ADDITIONAL DISTRICT JUDGE, HARIPUR AT GHAZI

Civil Miscellaneous Appeal No. 3/14
Date of Institution 30.05.2023
Date of Decision 31.07.2023

Muhammad Afsar s/o Mst. Razia Begum, residents of Sirikot Tehsil
Ghazi District Haripur and 07 others.

(Appellants/Plaintiffs)

Versus

Sabir s/o Sardar r/o Sirikot Tehsil Ghazi District Haripur and 69
others.


(Respondents/Defendants)

JUDGMENT

31.07.2023

This civil miscellaneous appeal is directed against the judgment and order of learned Civil Judge-II, Ghazi dated 23.05.2023, in Civil Suit No. 36/1 (Neem) of 2021, whereby the application of the plaintiffs/appellants for issuance of temporary injunction was turned down. It is prayed that on acceptance of this appeal, status quo may be granted in favor of the plaintiffs/appellants till decision of suit.

2. For the sake of convenience and to avoid confusion, parties are referred to with their original status in the suit.
3. The plaintiffs filed a civil suit in respect of Property Survey No. 3640 measuring 08 Kanal and 17 marla, No. 3644 measuring 09 Marla, No. 3647 measuring 03 Kanal and 01 Marla and No. 3643 measuring 01 Kanal and 14 Marla, and No. 3645 measuring 15 Marla, situated at Revenue Estate Sirikot for possession through partition against the defendants by contending that they are joint


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owners in the suit property; that the plaintiffs are owners of property to the extent of 05 Kanal and 16-½ Marla (or their due share as per Revenue Record); that the defendants are in possession of more than their due share due to which a number of conflicts have risen and the only solution to such conundrum is partition.

4. The learned trial court summoned the defendants who after appearing submitted written statement and reply. The case was contested by raising a number of legal and factual grounds. While deciding the application for temporary injunction filed by the plaintiffs, the learned trial court dismissed the same vide impugned judgment and order. Plaintiffs being aggrieved with the findings of learned trial court have preferred this appeal; it was contested by the respondents.
5. I heard learned counsel for the parties and perused the record. Record evinces that both the parties are recorded as joint-owners of the suit property; they have not denied the title of each other and the main prayer of the plaintiffs is for separation of their shares through partition. It goes without saying that there is some private partition and the parties are in possession of their shares. However the allegation of the plaintiffs that the defendants are bent upon taking into possession more share than their due.


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Partition in such circumstances is appropriate relief. Thus for the purposes of the instant suit, the plaintiffs have got a good *prima facie* case in their favor. Sequel to that the other conditions- precedent for grant of temporary injunction also co-exist in favor of the plaintiffs as in case of changing nature of the suit land or taking into possession the shares of others by one co-owner will further create complications, compelling the parties to be driven from pillar to post to get the required relief. Therefore, it is deemed in the fitness of things that *status quo* is maintained restraining the parties from changing its nature and be restricted to their respective position in the disputed property survey numbers. The learned trial court relied upon the reported judgment of Honorable the Peshawar High Court judgment 2016 CLC Page 176 however has mis-interpreted the principles laid down in the same. There is no cavil to the proposition that mere injunctive relief cannot be sought by one co-owner against the other but it depends upon the form of the suit and the instant suit is quite in consonance with the principles laid down in the referred judgment wherein injunctive relief could be sought with formal prayer for partition of undivided property. The learned trial court passed the impugned order without taking into consideration all these aspects of the case and decided the matter

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in a mechanical and superficial manner which order of learned trial court is not sustainable. Therefore, on acceptance of this appeal, the impugned order of the learned trial court is set aside, application for grant of temporary injunction is accepted and status quo is ordered to be maintained for a period of 06 months or disposal of the case, whichever occurs earlier. Costs shall be borne by the parties. Copy of this order be sent to the learned trial court for information. File be consigned to record room after necessary completion and compilation.

Announced
31.07.2023


Addl: District Judge, Haripur at Ghazi
(Wajid Ali)
Additional District Judge,
Haripur at Ghazi

Certificate

Certified that this judgment consists of 4 pages and each page has been signed by me after necessary correction.


Addl: District Judge, Haripur at Ghazi
(Wajid Ali)
Additional District Judge,
Haripur at Ghazi