

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R. No.191/2019
Rab Nawaz and others
Versus
Shabbir Hussain and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	20.05.2019	Mirza Nabeel Tahir, Advocate for the petitioners.

Through the instant civil revision petition, the petitioners impugn the order dated 22.04.2019, passed by the Court of the learned Additional District Judge, Islamabad, whereby their appeal against the order dated 04.03.2019, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said order dated 04.03.2019, the learned Civil Court dismissed the petitioners' application under Order XXXIX, Rules 1 and 2, C.P.C. filed along with their suit for "*partition through possession and permanent injunction*".

2. Learned counsel for the petitioners submitted that the petitioners are co-sharers of land in *Khewat* No.30, *Mouza Kortana*, Tehsil and District Islamabad; that no partition of property has taken place between the co-owners in the said *Khewat*, and that the respondents are unlawfully raising construction on land in which the petitioners also have joint share. Learned counsel for the petitioners prayed for the revision petition to be allowed in terms of the relief sought therein.

3. I have heard the contentions of the learned counsel for the petitioners.

4. In essence, the petitioner's case is that they are co-sharers in *Khewat* No.30, *Mouza Kortana*, Tehsil and District Islamabad, which comprises of

37 *kanals* and 19 *marlas*, and that respondents No.1 to 3 being co-owners of land in the said *Khewat* are raising construction without the land being partitioned. The petitioners do not deny the ownership of land in the said *Khewat* by respondents No.1 to 3.

5. Perusal of the impugned order dated 04.03.2019, passed by the learned Civil Court shows that the respondents had taken the position that *"their construction will always be subject to partition"*. The learned Appellate Court has also observed that if the contesting respondents are raising construction on land which is jointly owned, then the construction raised by the respondents would be subject to partition. It is my view that the said position taken by respondents No.1 to 3 adequately protects the petitioners' interests. The construction raised by the said respondents on jointly owned land would not prejudice the petitioners' rights in the partition proceedings.

6. Since I do not find any jurisdictional irregularity in the concurrent judgments/orders passed by the learned Courts below, the instant petition is dismissed in *limine*.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*