

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 1164 of 2015
Date of Decision: 27.4.2015.**

Rahim Khan

.....Petitioner

Versus

Afjal and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Munfaid Khan, Advocate
for the petitioner.

SABINA, J.

Petitioner has filed this petition challenging the orders dated 21.10.2014 and 9.12.2014.

I have heard the learned counsel for the petitioner and have gone through the record available on the file carefully.

It has been held by this Court in the case **Sant Ram Nagina Ram vs. Deva Ram Nagina Ram and others AIR 1961 PB 528** as under:-

“(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession.

(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when

there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.

- (5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.*
- (6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.*
- (7) Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition.*
- (8) The remedy of a co-owner not in possession, or not in possession of a share of the joint property, is by way of a suit for partition or for actual joint possession, but not for ejectment. Same is the case where a co-owner sets up an exclusive title in himself.*

(9) *Where a portion of the joint property is by common consent of the co-owners reserved for a particular common purpose, it cannot be diverted to an inconsistent user by a co-owner; if he does so, he is liable to be ejected and the particular parcel will be liable to be restored to its original condition. It is not necessary in such a case to show that special damage has been suffered. Case law reviewed.”*

Petitioner has filed suit for permanent injunction restraining the defendants from raising construction over the suit land and restraining them from interfering in his peaceful possession qua the suit land. Along with the suit, petitioner moved an application for interim injunction. The Courts below have dismissed the application moved by the petitioner for interim injunction. Admittedly, in the present case, the suit property is jointly owned by the parties and has not been partitioned so far. The Courts below, thus, rightly held that the petitioner could seek partition of the joint land but could not seek the relief of interim injunction against a co-sharer as till the joint property is partitioned, every co-owner has a right to enjoy the joint property and is deemed to be in possession of every inch and parcel of the joint land.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

April 27, 2015
Gurpreet