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

CR No.1205 of 2015 (O&M)

Date of decision: July 09, 2015

Rajender and another

.....Petitioners

Versus

Surender and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Vishal Nehra, Advocate
for the petitioners.

SABINA, J

Petitioners have filed this petition challenging the orders dated 25.09.2012 and 13.11.2014.

Learned counsel for the petitioners has submitted that defendant Nos.1 to 8 had purchased land from performant defendant Nos.9 to 12. The Courts below had erred in not issuing a direction restraining the respondent No.1 from interfering in the possession of the plaintiffs.

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.”

Petitioners have filed suit for permanent injunction.

Alongwith the suit, an application for temporary injunction was filed.

Since defendant Nos.1 and 8 have purchased land from defendant Nos.9 to 12, they are co-sharers with the plaintiffs qua

the suit land. There is nothing on record to suggest that plaintiffs are in exclusive possession of the suit land. In these circumstances, every co-sharer is deemed to be in possession of the joint property. Hence, the Courts below rightly held that no direction can be issued to respondents restraining them from interfering in the peaceful possession of the plaintiffs. The only remedy available to a co-sharer who wants separate possession is to seek partition of the joint land.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

July 09, 2015
mahavir