

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 1423 of 2015

Date of Decision: 03.03.2015

Satpal

.....Petitioner

Vs.

Satish and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. C.L. Dahiya, Advocate,
for the petitioner.

SABINA, J.

Petitioner has filed this petition challenging the orders dated 03.01.2015 (Annexure P-1) and 29.01.2015 (Annexure P-2), whereby an application moved by the petitioner under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, (for short 'CPC'), was dismissed.

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

Petitioner had filed suit for permanent injunction. Along with the suit, petitioner filed an application under Order 39 Rules 1 and 2, CPC for temporary injunction. The trial Court vide order dated 03.01.2015 dismissed the application and the said order was upheld in appeal vide impugned order dated 29.01.2015 (Annexure P-2).

The Courts below have noticed that the petitioner had filed suit against his other co-sharers for restraining them from interfering in his peaceful possession. It was the case of the petitioner that he was in an

exclusive possession of the property in question. It has been noticed by the Courts below that as per the revenue record, petitioner was shown to be in possession of the land in question. However, in an earlier litigation vide *rapat roznamacha* dated 08.11.2006, joint possession of the land measuring 72 Kanals 09 Marlas was delivered to the petitioner and his co-sharers in terms of the compromise Exhibit C-1. Since all the co-sharers including the petitioner were given joint possession of the land measuring 72 Kanals 09 Marlas, vide *rapat roznamacha* dated 08.11.2006, the Courts below rightly held that the entries of the possession in favour of the plaintiff in revenue record from the year 1995-99 did not advance the case of the petitioner.

It has been held by this Court in the case of **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 coowner 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.”

Thus, a co-sharer in joint possession cannot claim injunction against other co-sharers with regard to possession. All the co-sharers are entitled to equally enjoy the joint property.

Hence, no ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

March 03, 2015
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