

In the High Court of Punjab and Haryana at Chandigarh

CR No. 2193 of 2015

Date of decision: 30.03.2015

Basant Kumar Jain

.....Petitioner

Versus

Ganga Bishan and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.J.S.Cooner,Advocate
for the petitioner.

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SABINA, J

Petitioner has filed this petition challenging the orders dated 1.12.2014 (Annexure P1) and 12.2.2015 (Annexure P2), whereby application moved by the petitioner for temporary injunction, was dismissed.

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 R.S.A.No. 134 of 2003 9 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 R.S.A.No. 134 of 2003 10 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 the suit for permanent injunction with consequential relief of mandatory injunction. Along with the suit, petitioner filed an application under Orders 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 seeking relief of temporary injunction. The case of the petitioner is that he was in joint possession of the suit property.

Since the petitioner was not in exclusive possession of the suit property, the Courts below had rightly held that the petitioner had no, prima facie, case or balance of convenience in his favour qua relief of temporary injunction. Merely because one of the co-sharers was raising construction over the joint property, would be no ground to hold that the petitioner was being ousted from the joint property.

No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

March 30,2015
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