

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 2535 of 2015 (O&M)
Date of Decision: 10.4.2015.

Ranbir Singh and others

.....Petitioners

Versus

Nawal Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. C.B.Goel, Advocate
for the petitioners.

SABINA, J.

Petitioners have filed this petition under Article 227 of the Constitution of India challenging the orders dated 1.8.2014 and 25.3.2015.

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

Petitioners have filed suit for permanent injunction. Along with the suit, petitioners moved an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 ('CPC' for short) seeking interim injunction. Both the Courts below have dismissed the application moved by the petitioners for interim injunction. The Trial Court has further held that the construction, if any, raised by the defendants would be subject to partition.

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.”*

Thus, as per the above decision, a co-owner has interest in the entire property and every parcel of it. Mere occupation of a larger portion or even entire joint property would not amount to ouster of the other co-sharers. Admittedly, the land in question is jointly owned by the parties and has not been partitioned so far.

In these circumstances, no ground for interference by

this Court is made out.

Dismissed.

(SABINA)
JUDGE

April 10, 2015
Gurpreet