

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.2636 of 2015

Date of Decision.21.04.2015

Sanjeet and others

.....Petitioners

Versus

Jagwanti and others

.....Respondents

Present: Mr. Sumeet Goel, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The petitioner is aggrieved that the relief of injunction sought against the purchaser from the co-owner in the suit itself could not have been allowed in the manner that has been done without impleading the alienating co-owner. The contention is that if the co-owner was in possession of the property as a purchaser, he is entitled to get into his shoes and enjoy the same rights as all the co-owners have. I hold that if the property is in undivided status and between the co-owners they have an arrangement to be in possession of various portions that arrangement can continue only so long as the same co-owners exist and if it is transferred, the transferee cannot enjoy the same right unless the non-alienating co-owner consents for the same. If he had an objection to the purchaser to enter upon the property, the remedy of the purchaser would only be to file the suit for partition and secure the property which was in enjoyment for an equitable allotment to the

alienating co-owner and get possession of the same. A stranger purchaser cannot force himself for joint possession against the non-alienating co-owner without his concurrence.

2. Even the argument made that the alienating co-owner is not made a party is not tenable, for, if the non-alienating co-owner wants to protect his possession against the stranger, it is not necessary that the co-owner is also made a party. If the purchaser wants to canvass for any right in the presence of the co-owner, he may be at liberty to do so by moving the application for impleadment and will have no bearing to the frame of the suit.

3. Learned counsel refers to me judgment of this Court in *Surjit Singh Vs. Mohinder Singh and anoher 2008(1) RCR (Civil) 396* that vendor selling his share of land in joint khewat without getting the land partitioned is not illegal. A co-sharer in joint land has a right to sell his share without getting the land partitioned, he can deliver possession of the portion of the joint land to his vendee if he is in exclusive possession of the same. I am not saying that sale by the co-owner is illegal or void. I am only saying that if the alienating co-owner in exclusive possession of the property sells it to the stranger and a non-alienating co-owner has an objection for the purchaser to enter upon the property, he is entitled to bring an action for injunction. The judgment in *Surjit Singh's* case did not address the issue of the entitlement of the non-alienating co-owner to maintain action for injunction.

4. The learned counsel also refers me a Full Bench ruling of this Court in *Bhartu Vs. Ram Sarup 1981 PLJ 204* which has been referred to also in *Surjit Singh's* case that has held that rights and liabilities of

co-owners are settled by Court inter se and the co-owner has interest in the whole property and also in every parcel of the same. Co-sharer in possession exclusively of some portion of joint holding not more than his share is entitled to continue in possession till joint holding is partitioned and can transfer that portion subject to adjustment at the time of partition. That precisely is what I have said already that a purchaser from a co-owner who was in possession can maintain action for partition and secure his own possession of the property which was held by the alienating co-owner through an equitable allotment in the partition proceedings. However, there is no way that a purchaser can disturb an arrangement between the co-owners the way they existed and if one co-owner is not interested in allowing the purchaser to get into property of the alienating co-owner, the purchaser will have no option than to secure his rights predicated by means of partition suit.

5. There is no warrant for interference. The orders passed by the Courts below are maintained and the revision petition is dismissed.

(K. KANNAN)
JUDGE

April 21, 2015
Pankaj*