

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 2693 of 2015

Date of Decision: 23.04.2015

Rajesh Bhalla

.....Petitioner

Vs.

Paramjit Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. V.K. Sandhir, Advocate,
for the petitioner.

SABINA, J.

Petitioner has filed this petition challenging the orders dated
24.02.2012 and 19.01.2015.

I have heard 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 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.”

In the present case, petitioner has filed suit for permanent injunction. Along with the suit an application for temporary injunction was filed that the defendant be restrained from raising construction over the

property in question. Vide the impugned orders, the said application was dismissed. Hence, the present petition.

Admittedly property in question is still joint between the parties and has not been partitioned so far. In these circumstances, the appropriate remedy for the petitioner is to seek partition of the suit property. The Courts below rightly held that since the property is jointly owned by the parties, no ground for grant of interim injunction is made out.

No ground for interference is made out.

Dismissed.

(SABINA)
JUDGE

April 23, 2015
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