

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 3654 of 2015

Date of Decision: 27.05.2015

Mool Chand and others

.....Petitioners

Vs.

Amro Devi and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Pritam Saini, Advocate,
for the petitioners.

SABINA, J.

Petitioners have filed this petition challenging the order dated 04.05.2015 whereby application moved by the plaintiffs under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 ('CPC' in short) was allowed.

Learned counsel for the petitioners has submitted that the parties were co-sharers qua the suit land and the same had not been partitioned so far. Therefore, the Appellate Court has erred in restraining the petitioners from interfering in the peaceful possession of plaintiff No. 1 qua the suit land.

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.”

Respondents have filed suit for permanent injunction alleging that they were in peaceful possession of land measuring 12 Kanals 0 Marla bearing Khasra No. 14//9 min, 14 situated in village Gobind Majra. Along with the suit, plaintiffs moved an application for interim injunction. The application for interim injunction was dismissed by the trial Court, vide order dated 04.05.2015. In appeal filed by the plaintiffs, the appellate Court restrained the petitioners from interfering in the peaceful possession of respondent No. 1-plaintiff No. 1 qua the suit property. As per the revenue record, respondent No. 1-Amro Devi is described to be in exclusive possession of land bearing Khasra No. 14//9 min (4-0) and 14 (8-0). Although the suit property is jointly owned by the parties but as per the revenue record, respondent No. 1 is shown to be in exclusive possession of the suit property. Therefore, the learned appellate Court rightly restrained the petitioners from interfering in the peaceful possession of respondent No. 1 qua the suit land, till the decision of the suit as a co-sharer who is in exclusive possession of the joint property can seek protection of his possession during the pendency of the suit.

Hence, no ground of interference is made out.

Dismissed.

**(SABINA)
JUDGE**

May 27, 2015
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