

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 4795 of 2013
Date of Decision: 02.3.2015.**

Ranbir

.....Petitioner

Versus

Sushila and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Mani Ram Verma, Advocate
for the petitioner.

Mr. Sudhanshu Makkar, Advocate
for respondents No. 1 to 4.

None for respondents No. 5 and 6.

SABINA, J.

Petitioner has filed this petition under Article 227 of Constitution of India challenging the order dated 30.7.2013 (Annexure P-2) whereby appeal filed by the respondents against the order passed by the Trial Court dated 15.1.2013 (Annexure P-1), was allowed.

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

Petitioner has filed the suit for permanent injunction restraining the defendants from making any construction over the property in dispute. The case of the petitioner was that the land in question was jointly owned by the parties and had not been partitioned so far. Defendants could not raise any construction

over the property in question without getting the same partitioned. The Trial Court allowed the application filed by the petitioner under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 claiming interim injunction. The defendants were restrained from raising construction on the joint land without seeking partition. However, the said order was set aside by the Appellate Court on the ground that as per the revenue record, defendant Balraj Singh co-sharer was shown in exclusive possession of *killa* No. 157//17/2, 18, 23 and 24/1.

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.”

Since in the present case, defendant Balraj Singh is in exclusive possession of *killa* No. 157//17/2, 18, 23 and 24/1, the learned Appellate Court rightly held that the said co-sharer had the right to enjoy the property in his exclusive possession. However, the same would be subject to partition. Admittedly, partition proceedings are also pending before the Revenue Court and are near completion.

Hence, the reasons given by the Appellate Court while allowing the appeal filed by the defendants, are sound reasons and call for no interference.

Dismissed.

**(SABINA)
JUDGE**

March 02, 2015
Gurpreet