

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.7268 of 2015
Date of decision: 5.11.2015**

Pavittar Singh

..... Petitioner

Versus

Mohinder Kaur

..... Respondent

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

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

Present : Ms. Bhupinder Kaur, Advocate for the petitioner.

ARUN PALLI, J. (Oral)

The present revision arises out of an application for injunction moved by the respondent-plaintiff. Vide order dated 19.03.2013, application for injunction moved by the respondent-plaintiff was dismissed by the trial Court. However, in an appeal preferred by the respondent the order declining injunction was set aside, appeal was accepted and petitioner-defendant was enjoined from causing forcible dispossession of the plaintiff. The conclusion recorded by the first Appellate Court in support of its order read as thus:-

“After perusing the case file. It is clear that the appellant/plaintiff has filed suit for permanent injunction restraining the respondent/defendant from interfering into the possession of the plaintiff on the ground that she has

purchased the property vide sale deed dated 12.02.1998 and is in exclusive possession of the same. Perusal of the sale deed shows the property to be a plot bounded as under.

East	:	55ft Street
West	:	Pavittar Singh
North	:	20 ft street
South	:	Ajmer Singh etc.

The plaintiff has placed on file copy of site plan regarding which the injunction is claimed and has also placed photographs on the file showing that the property has been constructed. The defendant relies upon the copy of jamabandi to show the fact that he is co-sharer in the property. Perusal of the entire pleadings of the defendant shows that he has not claimed his possession over the plaintiff/appellant. It is basic laws that a co-sharer in exclusive possession is entitled to retain the possession till partition. Under these circumstances, when plaintiff is in possession of the specific area, learned Lower Court has failed to appreciate this fact while deciding the application. Being in possession prima-facie case exists in favour of the plaintiff and she will suffer irreparable loss if dispossessed illegally and forcibly. Accordingly, the present appeal is accepted and the order of learned Lower Court is set aside and the application U/o 39 Rules 1 & 2 CPC is allowed

restraining the respondent/defendant from dispossessing the plaintiff illegally & forcibly from the suit property till the disposal of the main case”.

Record shows that the respondent/plaintiff had purchased the suit property pursuant to sale deed dated 12.02.1998, and was put in exclusive possession thereof. The site plan, as also the sale deed produced by the respondent clearly depicts the location as also boundaries of the suit land. Photographs brought on record also shows that the construction has already been raised therein. No doubt, petitioner/defendant happens to be one of the co-sharer but this was never the case set out by him that he was in possession of the suit property.

Needless to assert, even a co-sharer in exclusive possession of a portion of the joint property is entitled to seek injunction. And the remedy available with the other co-sharer is to seek partition.

Learned counsel for the petitioner could not point out as to how the conclusions that have concurrently been recorded by the trial Court, was either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above, no interference is warranted in exercise of revisional jurisdiction under Article 227 of the Constitution of India. The petition being devoid of merit is accordingly, dismissed.

November 5, 2015

Manoj Bhutani

**(ARUN PALLI)
JUDGE**