

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 7540 of 2012
Date of Decision: 23.4.2015.**

Fateh Singh

.....Petitioner

Versus

Sarwan Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Kanwal Goyal, Advocate
for the petitioner.

Mr. H.S.Thiara, Advocate
for respondent No. 1.

SABINA, J.

Petitioner has filed this petition challenging the orders dated 9.9.2011 (Annexure P-1) and 4.10.2012 (Annexure P-2).

I have heard the learned counsel for the parties 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.”*

Petitioner and respondent No. 2 have filed suit for permanent injunction restraining the defendant-respondent No. 1 from alienating/mortgaging any specific *khasra* number of the property in question without getting it partitioned and further from interfering in the peaceful possession of the plaintiffs over the land in question. Along with the suit, an application for temporary injunction was filed by the plaintiffs. Admittedly, as per the revenue record, the land in question is jointly owned by the parties. It has further transpired during the course of arguments that partition proceedings are pending before the revenue authorities. In these circumstances, the Courts below had rightly dismissed the application moved by the plaintiffs for temporary injunction as every co-sharer is deemed to be in possession of every inch and parcel of the joint land. Further, every co-sharer has a right to use and enjoy the property in a husband like manner. Moreover, the

partition proceedings are already pending before the revenue authorities.

Hence, no ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

April 23, 2015
Gurpreet