

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1712 of 2011 (O&M)

Date of Decision: 07.08.2015

Sarwan Singh and others

... Appellants

Versus

Puran Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vivek K.Thakur, Advocate,
for the appellants.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. It is always open to a co-sharer to sell his share in the property to anyone he likes. However, where cultivating possession of a particular piece of joint suit land is of long duration without any let or hindrance and possession is settled and exclusive by consent of the other co-sharers subject to division of property by partition then a co-sharer can always sell property to the extent of his share but he cannot sell specific khasra numbers and create unnecessary complications over the settled and exclusive cultivating possession of an unsuspecting co-sharer over the land claimed for the time being as that would disturb the equilibrium and potentially lead to mischief on the land at the hands of an outsider purchasing a share. This is what the courts below have wisely avoided by issuing an injunction against the defendant forbearing him not to disturb the peace by maintaining the status quo. It is settled position in law that when khasra numbers are

mentioned in a sale deed executed by a co-sharer in favour of third parties they are not to be read or enforced in law till a division takes place although the right to sell is inherent in joint ownership to the extent of vendor's share in common property. The buyer who is an outsider purchases the property with open eyes and he can exert his right to cultivation on a particular parcel of agricultural land by partition of property. This is how the law works. He can, however, claim a right to produce of the land to the extent of his share in the whole landholding by apportionment or by rendition of accounts. But he cannot insist on tilling the land under his plough without the consent of the co-sharers till such time the land is divided between the joint owners in cases where exclusive settled possession is established by evidence.

2. It is then argued by the learned counsel that an oral family partition took place in the year 1982 but was not given effect to in the revenue record. If it is not entered in revenue record then separate khasra numbers of each of the co-sharers would not *a fortiori* be described in revenue papers and this is all the more reason why an inducted vendee stepping into the shoes of the outgoing co-sharer, or partially outgoing co-sharer in joint khata should not be permitted to sell his share with description of khasra numbers in the sale deed.

3. Indisputably, the property is in joint ownership without partition having been effected so far and therefore an injunction can well be issued against an incoming co-sharer not to disturb possession of the others except in accordance with law. In the farmer's world the harrow, spade and plough rule the roost. He who sows is the one who reaps.

4. In **Bhartu v. Ram Sarup**, 1981 P.L.J. 204 the oft quoted Full

Bench of this Court have articulated the principles involved inasmuch as a co-sharer who is in possession exclusively of some portion of the joint holding, he is taken to be in possession thereof as a co-sharer and is entitled to continue to be in possession till the joint holding is partitioned. It has also been held that when a co-sharer sells his share in the joint holding or any portion thereof and puts the vendee into possession of the land in his possession, what he transfers is his right as co-sharer in the said land and the right to remain in its exclusive possession till the joint holding is partitioned amongst all the co-sharers. In this case the selling co-sharer was not found in exclusive possession of the khasra numbers he sold. It is settled that a co-sharer can seek injunction against a co-sharer on the basis of long settled possession when he is found exclusively tilling land even though each inch and every parcel is owned by one and all in the joint khata.

5. As a result I have no reason to disagree with the just and proper findings dispensed by both the courts on a pure point of fact decided on appreciation of evidence and the appeal is liable to be dismissed. After all, the present is a mere suit for permanent injunction against threat of forcible dispossession and not a title suit. The plaintiffs can succeed in a case of the present kind only if they are able to prove their exclusive possession over the suit property. In this endeavour the plaintiffs have succeeded by adducing evidence on record in support of a decree.

6. There is no question of law much less a substantial one involved in this appeal worth consideration for admission and regular hearing which may take years together with an interim stay against dispossession which I think would necessarily follow if notice were contemplated to be issued to

the opposite party. The solution ultimately lies in partition proceedings whenever they are taken out in the revenue courts when the land in dispute is meant solely for agricultural purposes and livelihood.

7. Accordingly the appeal is ordered to be dismissed.

(RAJIV NARAIN RAINA)
JUDGE

07.08.2015
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