

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

Regular Second Appeal No.4797 of 2015 (O&M)
Date of decision:16.09.2015

Gurnam Singh

... Appellant

versus

Nakhar Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. S.K.Arora, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (*Oral*)

1. The point involved in the appeal is whether a co-owner can maintain an action for injunction against another co-owner. Even a person in exclusive possession can maintain such an action only in a case where there is an arrangement between parties for convenient enjoyment that only one of them or some of them could be in possession and if yet another person, who was opted out of such possession by such arrangement, wants to resile from the arrangement, it could be only by means of a suit for partition. In every other situation, each co-owner is presumed to be in possession of every inch of land and if one co-owner is in exclusive possession

gratuitously, he cannot help himself to fend off an entry of another co-owner by reference to his exclusive possession. A pre-condition of arrangement either expressed or implied, if it does not exist, the claim for injunction is bound to be denied. That has been the result of the views expressed by the first appellate court. I will not cause any modification to the decree and dismiss the appeal modifying it leaving it open to the appellant to work out independent rights for assertion of the right of enjoyment to the extent to which he is entitled by a proper action for partition.

2. The second appeal is dismissed but with the above liberty.

(K.KANNAN)
JUDGE

16.09.2015
sanjeev